

**7/14/77**

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**WITHDRAWAL SHEET (PRESIDENTIAL LIBRARIES)**

FORM OF DOCUMENT	CORRESPONDENTS OR TITLE	DATE	RESTRICTION
memo	<del>From Hugh Carter to The President (1 p.) re: White House Emergency Procedures</del> <i>opened per RAC, 1/31/13</i>	7/13/77	A
memo	<del>From Brzezinski to The President (1p.) re: Meeting with Irish Ambassador Shannon</del> <i>opened per RAC, 1/31/13</i>	7/14/77	A

**FILE LOCATION**

Carter Presidential Papers- Staff Offices, Office of the Staff Sec.-Pres. Hand-writing File 7/14/77 Box **37**

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THE PRESIDENT'S SCHEDULE

Thursday - July 14, 1977

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7:15	Dr. Zbigniew Brzezinski - The Oval Office.
7:45	Mr. Frank Moore - The Oval Office.
8:00 (60 min.)	Breakfast Meeting with Senatorial Group. (Mr. Frank Moore) - The Roosevelt Room.
9:30	Mr. Jody Powell - The Oval Office.
10:00 (60 min.)	Meeting with His Excellency Helmut Schmidt, The Chancellor of the REpublic Republic of Germany. (Dr. Zbigniew Brzezinski). The Cabinet Room.
11:55	Amb. William Shannon. (Dr. Zbigniew Brzezinski). The Oval Office.
12:00	Lunch with Honorable Averell Harriman. The Oval Office.
1:00 (20 min.)	Vice President Walter F. Mondale, Dr. Zbigniew Brzezinski, Mr. Hugh Carter and Mr. Herbert S. Upton - The Oval Office.
1:30	Mr. Bert Lance - The Oval Office.
2:00 (15 min.)	Secretary Harold Brown - The Oval Office.
2:30 (15 min.)	Meeting with Representative Shirley Chisholm. (Mr. Frank Moore) - The Oval Office.
3:00 (10 min.)	Mr. John Van de Kamp. (Mr. Robert Lipshutz).
3:15 (30 min.)	Meeting Concerning Federal Regional Councils. Mr. Jack Watson) - The Cabinet Room.
4:00	Meeting with Secretary Robert Bergland. (Mr. Jack Watson) - The Oval Office.

MEMORANDUM

THE PRESIDENT HAS SEEN.

THE WHITE HOUSE  
WASHINGTON

4561

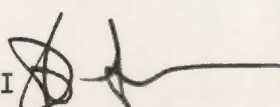
ACTION

July 14, 1977

MEMORANDUM FOR:

THE PRESIDENT

FROM:

ZBIGNIEW BRZEZINSKI 

SUBJECT:

Message from You to be Read at  
the 8th Annual Meeting of the  
League of Families.

The League of Families is having its 8th annual meeting on Saturday, July 16, in Washington.

Earlier, you declined an invitation to address the group but indicated that you would send a message at an appropriate time.

The group will be addressed by Phil Habib.

I recommend that you approve the message at Tab A for Phil Habib to read to the meeting.

RECOMMENDATION:

That you approve the message at Tab A.

APPROVE ☒

DISAPPROVE ☐

*Why not acknowledge  
trip to Vietnam, etc &  
small progress made -  
without bragging?  
J*

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THE WHITE HOUSE  
WASHINGTON

July 16, 1977

To Those Attending the 8th Annual Meeting of the  
National League of Families

I regret not being able to be with you this evening, particularly since I attach priority to securing a fuller accounting of those Americans whose precise fate in Southeast Asia remains unknown. Your organization has played a vital role in reminding Americans of this important obligation.

One of my first actions in office was to send a Presidential Commission to the Indochina states to seek additional information about our missing. The Commission returned with remains of 11 servicemen and 20 more have been promised. A mechanism has been established to facilitate our search for more information. Some progress, in short, has been made but more remains to be done.

The tragic legacy of the Indochinese war will be with us for years to come. We especially honor those whose sacrifices were greatest: the dead, the missing, the maimed, and all of their families.

Those servicemen and civilians whose fate in Southeast Asia is unknown, and the families who still await word, have a special place in our minds and hearts. I share

AUG 1 1977

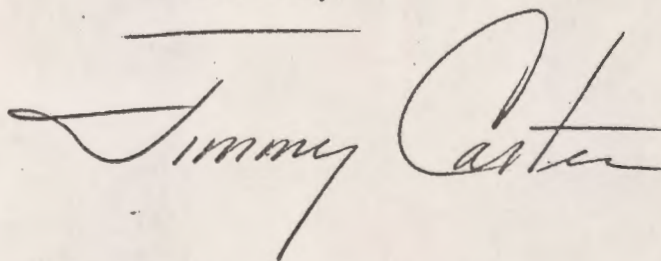
CENTRAL FILES

the torment of those who have not learned precisely what happened to their loved ones. Your lives are clouded by profound uncertainty. Not knowing, you can neither anticipate a certain reunion nor fully mourn and try to adjust to a known loss.

I know that for many of you at this meeting, this anguish has persisted for more than a decade. I join in your grief. For this reason and for our nation's honor, my Administration will persist vigorously to obtain as full an accounting as possible from Vietnam, Laos, and Cambodia. For them to withhold any information would be both cruel and pointless.

It is our task as a nation to bind our war wounds. We seek unity at home after a long period of rancor and division. We hope to establish peaceful relations with our former adversaries. Neither malice nor feelings of guilt can guide our actions. With compassion and confidence in our nation's purpose, however, we can accomplish our goals. I ask those who have sacrificed and endured so much to join me in my efforts.

Sincerely,

A handwritten signature in cursive script that reads "Jimmy Carter". The signature is written in dark ink and is positioned below the word "Sincerely,".

National League of Families of American  
Prisoners and Missing in Southeast Asia  
1608 K Street, N. W.  
Washington, D. C. 20006

*8th Annual meeting  
Read by Philip Habib*

70 C

770760000

Chancellor Helmut Schmidt  
Came to B. Centennial  
London Summit

Inter. ?'s - both nations

Close friendship since  
Fed Repub formed

Restrained/enlightened  
leadership

Minister Genscher -  
labor - industry - cultural  
leaders

Democracy - progress -  
peace = Allies  
support

US/SU - Bilat + Multilat

CTB - Indian OC - Chem/Rad.  
missile tests - satellite - B. visit  
space/science treaty - SALT

~~EU~~/PRC - SU econ. - CSCE

Soviet public statements - divide

MBFR - Ph I US/SU Ph II - ?

Non prolif. fuel cycle eval.

Argen. Brazil. Thailand

Export LMFR  
Arms sales

Schmidt  
7-14-77

— THE WHITE HOUSE —  
WASHINGTON

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Envir. Xport - Energy

Conventional arms reduction

ILO - AFL-CIO/CEC/Goit

Obstacle to MTN - Japan

New mayor in Berlin

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THE WHITE HOUSE  
WASHINGTON

July 14, 1977

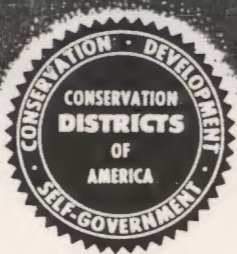
Secretary Bergland

The attached was returned in  
the President's outbox today.  
It is forwarded to you for  
your information.

Rick Hutcheson

cc: Jack Watson

RE: PRESIDENT'S VISIT TO AN "ON  
FARM" CONSERVATION PROGRAM



## Navelencia Resource Conservation District

23168 E. Jensen Ave. - Reedley, California 93654 - Phone: (209) 638-3214

THE PRESIDENT HAS SEEN.

cc  
England  
J

HONORABLE JAMES CARTER, PRESIDENT  
UNITED STATES OF AMERICA  
WASHINGTON, D.C.

**Electrostatic Copy Made  
for Preservation Purposes**

DEAR MR. CARTER,

THANK YOU FOR HONORING THE NAVELENCIA RESOURCE CONSERVATION DISTRICT, MAY 17, 1977 BY VISITING AN "ON FARM" CONSERVATION PROGRAM. MR. KRYDER NOT ONLY SERVES AS A DIRECTOR OF THIS DISTRICT TO HELP EDUCATE COOPERATORS ON CONSERVATION PRACTICES, BUT IMPLIMENTS THE PRACTICES ON HIS OWN LAND.

WE ARE VERY PROUD OF CHARLES, AND HIS WORK FOR THE DISTRICT. YOU PAID HIM THE HIGHEST COMPLIMENT BY COMING ALL THE WAY TO CALIFORNIA TO VISIT HIS FARM.

RESOURCE CONSERVATION DISTRICTS, AND STATE RESOURCE CONSERVATION COMMISSIONS ARE THE "GRASSROOTS" ARM OF LOCAL GOVERNMENT. IT IS VERY IMPORTANT THAT THESE ENTITIES BE SUPPORTED AND FUNDED IN EVERY WAY TO OVERSEE THE BEST LAND MANAGEMENT PRACTICES POSSIBLE TO PRESERVE THE NATIONS NATURAL RESOURCES.

YOUR VISIT TO OUR DISTRICT HAS BROUGHT HOPE TO THE PEOPLE OF CALIFORNIA, THAT YOUR UNDERSTANDING OF THE DROUGHT SITUATION IS THOROUGH, AND YOU WILL DO ALL YOU CAN TO HELP.

THANK YOU AGAIN FOR YOUR TIME AND CONSIDERATION.

SINCERELY,

*Manuel N. Silva*

21819 E. Muscat  
Reedley, Ca. 93654  
July 1, 1977

Dear President Carter,

I thought you might like to know what has taken place in our county since your May visit to our ranch.

Ground water tables have continued to drop, with many wells producing at only a small fraction of their normal capacity. Some are completely dry. In our own case, the lateral well that you inspected while here seems to be holding for the time being. But the well on our home place has fallen to about half capacity.

In light of this we have applied for ASCS cost-sharing, and also have applied to Farmers' Home Administration for an emergency loan to cover the anticipated cost of drilling a new well. We are hoping there are cost share funds available from the ASCS to cover all the many applications in this county. Your support of these programs was very gratifying to us and to many others in this area!

As I told you when you were here in May, you will always be welcome at our ranch, so we hope that someday you can find the time to return. It was a great thrill to welcome you, never to be forgotten by my family and me. We cherish the pictures sent to us by your photographer, and our children are delighted to have autographed portraits of their President.

Very truly yours,

*Chuck Kryder*

TO: Manuel

FOR: The President

1. Section 208; Federal Water Pollution Control Act, Amendments of 1972; Public Law 92-500.

Urge support of Senate Bill 1280 which would provide Federal Cost-Sharing to assist Resource Conservation Districts, working with the Environmental Protection Agency, to "develop and implement state and area wide water quality management plans relating to non-point sources of pollution".

2. Great Plains Conservation Program.

Urge support of Bill, now in Congress, to "make Great Plains Program available to all the Western States affected by the drought".

The Great Plains conservation program, administered by SCS since 1956, aims at bringing about a more nearly permanent solution to problems resulting from drought and the cultivation of land unsuited for sustained crop production. It helps stabilize agriculture and the economy of towns dependent on agriculture in the Great Plains. Local leadership comes from the conservation districts, who have been largely responsible for the promotion and general acceptance of this program.

Under this program, USDA through conservation districts helps participating land users prepare and follow a conservation plan, enabling them to make needed adjustments in land use and to install conservation measures on their land.

Technical assistance and cost sharing help the land users carry out conservation plans over a period not to exceed ten (10) years. Cost sharing is specifically limited to installing permanent conservation practices and is obligated when the plan is developed and the contract signed. This guarantees the availability of funds to apply the needed practices on schedule and to make any needed changes in land use.

3. Soil Surveys.

Urge larger appropriation of monies for Soil Surveys to delineate "prime farmland" that should be preserved.

Soil surveys are an important tool for farmers and ranchers, city, county, and state officials, land use planners, engineers, developers and builders, and other in planning use and management of land and water resources.

Congress has authorized (Public Law 89-560, 1966) SCS to make soil surveys in suburban developing areas as well as in agricultural areas. Soil survey information helps planners select land suitable for constructing houses, factories, schools, airports, highways, and shopping centers in expanding urban areas.

Each soil survey describes the key characteristics of soils in the survey area, classifies and names the soils according to a nationwide system, provides information on the potential and limitations of the soils for various uses, and shows the distribution of soils on detailed maps.

SCS publishes the soil surveys, including maps. In addition, SCS cooperates with agencies that prepare special maps and reports based on soil surveys. All the work is carried out cooperatively with other federal and state agencies, including the state agricultural experiment stations.

4. Drought and Flood Conservation Program.

This emergency legislation, signed by the President on May 4, 1977, "has been an outstanding success", however, all the funds have been allocated and more is needed.

Urge support for more funds, including 22 million dollars for California, so that thousands of ranchers and farmers who signed up for assistance under the program, will not have to be turned down, as is now the case.

# START

228  
/  
~~CONFIDENTIAL~~ BRIEFING PAPER

Shannon Meeting

DECLASSIFIED

Per, Rac Project

ESDN; NLG-126-8-19-1-2

BY 146 NARA DATE 1/30/13

THE WHITE HOUSE

4588

WASHINGTON

CONFIDENTIALINFORMATION

July 14, 1977

MEMORANDUM FOR: THE PRESIDENT

FROM: ZBIGNIEW BRZEZINSKI *28*

SUBJECT: Your Meeting with Ambassador  
William Shannon, July 14, 11:55 a.m.

This is a five-minute courtesy call, with pictures.

Background

Shannon was sworn in July 11, leaves for Dublin July 14 and presents credentials to Irish President Hillery July 20.

US-Irish relations are excellent, devoid of problems, and were enhanced by then Foreign Minister FitzGerald's visit with the President on March 16. A new Irish Government under Jack Lynch took office July 5. The troubled economy (11 percent unemployment and 14 percent inflation rates) caused defeat of the Cosgrave Government in June 16 elections. Northern Ireland apparently was not an issue. Observers believe Lynch will downplay his Fianna Fail Party's 1975 call for a UK declaration of intent to withdraw from the North. He is expected to continue general UK-Irish cooperation on the issue, but to prod the British more vigorously to bring about "power-sharing" between Protestants and Catholics. Lynch will undoubtedly continue to oppose violence over the North, and support for violence by private groups in the US.

Talking Points:

- Express gratification at excellent US-Irish ties, and confidence Shannon will contribute significantly to further strengthening them.
- Note long-standing USG policy of non-involvement in Northern Ireland, while reaffirming support for a peaceful and just solution involving the two communities which protects human rights.
- Reaffirm USG determination to combat private, illegal US involvement in the Northern situation.

CONFIDENTIAL

DECLASSIFIED

Per: Rac Project

ESDN: NLC-126-878-172

BY *25* NARA DATE *1/30/13*

~~SECRET/SENSITIVE~~

DECLASSIFIED  
Per, Rac Project  
ESDN: NLG-126-8-19-1-12  
BY K6 NARA DATE 1/2/12

SECRET/SENSITIVE

THE WHITE HOUSE

WASHINGTON

July 13, 1977

5  
1

MEETING ON WHITE HOUSE EMERGENCY PROCEDURES

Thursday, July 14  
1:00 p.m. (30 minutes)  
Oval Office

From: Hugh Carter 

I. PURPOSE

To discuss recommendations on White House Emergency Procedures for relocation for you and the Vice President

II. BACKGROUND & PARTICIPANTS

A. Background: You agreed to have a meeting to review questions that have arisen pertaining to White House Emergency Procedures for relocation. Below is a short agenda for this meeting:

(A) Presidential Relocation

1. Long warning situation
  - a. briefing on site locations
  - b. need to be aware of options; no decision needed
2. Short warning relocation options  
Action should be as automatic as possible
  - a. Stay
  - b. Relocate  
-- NEACP question and ramifications

(B) Vice President's Relocation

1. Short warning
  - a. Stay
  - b. Relocate  
-- NEACP question and ramifications

(C) Coordination of President and Vice President's travel

B. Participants: The Vice President, Dr. Brzezinski, Col. Bill Odom, Hugh Carter and Herb Upton

NOTE: After the meeting it would be appreciated if you could say goodbye to Herb Upton. He has been working with me on military liaison since March, and has been very instrumental in a number of the cutbacks in the military assistance to the White House. Herb has been on leave of absence from Proctor and Gamble in Augusta, Georgia. There will be a White House Photographer present after the meeting for a photo.

DECLASSIFIED

Per: Rac Project

ESDN: NLC-126 8-19-1-2

BY 15 NARA DATE 1/30/13

# FINISH

THE WHITE HOUSE

WASHINGTON

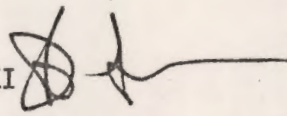
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Earlier, you declined an invitation to address the group but indicated that you would send a message at an appropriate time.

The group will be addressed by Phil Habib.

I recommend that you approve the message at Tab A for Phil Habib to read to the meeting.

RECOMMENDATION:

That you approve the message at Tab A.

APPROVE ☒DISAPPROVE ☐

*Why not acknowledge  
trip to Vietnam, etc &  
small progress made -  
without bragging?*  
*J*

*original returned to ZB.*

To Those Attending the 8th Annual Meeting of the League of Families

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Those servicemen and civilians whose fate in Southeast Asia is unknown, and the families who still await word, have a special place in our minds and hearts. I share the torment of those who have not learned precisely what happened to their loved ones. Your lives are clouded by profound uncertainty. Not knowing, you can neither anticipate a certain reunion nor fully mourn and try to adjust to a known loss.

I know that for many of you at this meeting, this anguish has persisted for more than a decade. I join in your grief. For this reason and for our nation's honor, my Administration will persist vigorously to obtain as full an accounting as possible from Vietnam, Laos, and Cambodia. For them to withhold any information would be both cruel and pointless.

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our actions. With compassion and confidence in our nation's purpose, however, we can accomplish our goals. I ask those who have sacrificed and endured so much to join me in my efforts.

Respectfully,

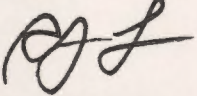
J.C.

THE WHITE HOUSE

WASHINGTON

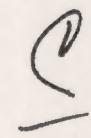
July 14, 1977

MEMORANDUM FOR THE PRESIDENT

FROM: Bob Lipshutz   
SUBJECT: Status of Nixon Tapes and Materials

In response to your inquiry concerning the above matter in Congress, the proposed public access regulations sent up by GSA were referred to the Governmental Affairs Committee (Senator Abraham Ribicoff, Chairman) and to the House Administration Committee (Congressman Frank Thompson, Chairman). The person handling this for Chairman Thompson in the Administration Committee of the House is Congressman John Brademas.

Unless voted down by the Congress, these regulations will go into effect.



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THE WHITE HOUSE  
WASHINGTON

7-14-77

To 3619

What are we  
doing to control Cuban-US  
terrorists?

J.

THE PRESIDENT HAS SEEN.

MEMORANDUM FOR THE PRESIDENT

Subject: Pending Legislation on the International  
Financial Institutions

The Appropriations Bill passed by the House on June 23 would effectively bar the pending United States contribution of \$2.0-2.6 billion (depending on Congressional action) to the World Bank family and the three regional development banks. Amendments to the Bill would proscribe the use of U.S. funds "directly or indirectly" for aid to seven countries (Vietnam, Laos, Cambodia, Uganda, Angola, Mozambique and Cuba) and for production of three commodities (palm oil, sugar and citrus).

McNamara confirms after legal determination by counsel that the World Bank cannot accept such earmarked money because the United States would then be unable to make the required unconditional commitment of funds. The regional banks always follow the World Bank lead on such matters.

Final Congressional enactment of such prohibitions, and the resulting inability of the United States to contribute to the banks, would be extremely serious for U.S. foreign policy:

-- The IDA V replenishment, which was cited in the London Summit communique, would collapse.

-- The U.S. capital contributions to the Bank and to the later International Finance Corporation (in the World Bank Group) could not be made and the U.S. would lose its veto power over charter changes.

-- The current replenishments of both the Inter-American Development Bank and the Asian Development Fund would collapse, and both would be out of money by late 1977-early 1978.

-- The United States would be viewed as reneging on one-third of its total aid contribution.

-- Relations with some of our key allies would also suffer, as many of them (e.g., Japan) have already gotten parliamentary approval for their IFI contributions and would be left hanging by a U.S. failure to meet its international commitments.

-- Hence the Administration will have to make an all-out effort to prevent final enactment of these prohibitions.

In addition, there is a problem with the money amounts. The House passed an across-the-board five percent cut in the total appropriations, which if pro-rated would bring us below the minimum acceptable levels for IDA and the Inter-American Bank. We need to restore to at least the House Appropriations Committee level of \$2,123 million, and preferably to about \$2.3 billion.

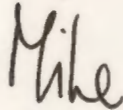
A review of recent Senate votes on IFI bills indicates that we might be able to prevail on the money amounts, but have an extremely difficult task ahead on the prohibitions:

-- A Harry Byrd Amendment to sharply reduce the authorized levels for the banks was soundly defeated, by a vote of 29 to 62. All members of Inouye's Subcommittee supported us, with the exception of Johnston and Proxmire, and 16 of 25 members of the full Appropriations Committee voted with us. Our vote count projects at least 16 votes in Committee and 59 votes against crippling cuts on the floor.

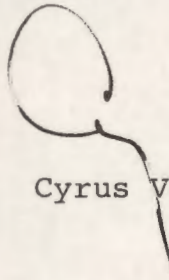
-- The anti-Vietnam-type amendments, on the other hand, present an acute problem. Among the ten Inouye Subcommittee members, the Dole Amendment received support from six (Chiles, DeConcini, Johnston, Leahy, Proxmire and Schweiker). On the full Committee, the Dole Amendment carried by 15-9 with McClellan not voting. On the Senate floor, only 38 voted to table the Dole Amendment and 32 voted against its passage. Consequently, at this stage, we probably can only count on about 32 members to stay with us, meaning that we must pick up an additional 19 votes.

The key actor is Senator Inouye, as Chairman of the Subcommittee which will start marking up the appropriation bill on July 13. We also need to work on the full Subcommittee. We recommend that you personally call Chairman Inouye and Senator Robert Byrd (who has voted against every foreign aid bill this year, but may help with the earmarking provisions if you convey their importance to him). He is not only the Majority Leader, but also a member of the Appropriations Committee. It would also be helpful if you could call Senators Leahy and DeConcini, who represent key swing votes. Talking points are at Tab 1, and our full legislative strategy at Tab 2.

We will host a luncheon for the full Subcommittee if Senator Inouye recommends such a course, or call the members individually. We will also distribute copies of McNamara's letter to the Senators prior to this luncheon. In addition, contacts must begin immediately with members of the full Appropriations Committee and the Senate, because the whole process could be completed within a week.



W. Michael Blumenthal



Cyrus Vance

THE PRESIDENT HAS SEEN.

*Give info  
call back  
late in  
afternoon*

TALKING POINTS FOR THE PRESIDENT'S CONVERSATION  
WITH SENATOR ROBERT BYRD

1. Since the Senate Appropriations Committee will consider the FY 1978 appropriations bill for the international financial institutions soon after the recess, I want you to know that I am deeply concerned by the earmarking provisions and funding levels in the House version of the bill.

2. Measures such as the Young Amendment on specific countries, and the Moore Amendment on specific commodities, which require the United States to impose conditions on the use of its contributions by these institutions would have extremely serious implications for the world economy and for U.S. foreign policy. The banks simply could not accept our contributions on such terms. President McNamara of the World Bank has informed me that there is no way around this legal prohibition.

3. Such earmarking would thus threaten to disrupt the multilateral organizations which are an integral part of the international economic system that has been so carefully constructed since World War II:

- IDA V would collapse.
- The Asian Development Fund and Inter-American Development Bank would be out of funds by late 1977 or early 1978.
- The United States would be viewed as reneging on one third of its total foreign assistance, raising major problems both with the developing countries and the other donor countries -- who would once again be left hanging by a U.S. failure to make good on its international pledges.
- I ask your help in assuring that the Appropriations Committee and Senate do not adopt similar provisions.

4. I am also requesting your support for adoption of a bill with funding levels as close as possible to those which I originally requested:

- As you know, the Administration is requesting a total of \$2.6 billion for the banks in the FY 1978 appropriations bill.
- Of this total, over \$1 billion is for callable capital, which is included in the appropriations bill at your request. The chances of any of these funds ever leaving the Treasury are extremely remote.
- As you know, the House reduced our request for the banks by almost half a billion dollars. I hope that the Senate will come as close to my original funding request as possible, and believe that any further reductions from the level recommended by the House Appropriations Committee (\$2,123 million) would seriously impair our ability to participate fully and meaningfully in their ongoing activities.

5. The House passed a bill that is a serious threat to our national interests and the world economic system. I will appreciate your support and, of course, your advice.

THE PRESIDENT HAS SEEN.

TALKING POINTS FOR THE PRESIDENT'S CONVERSATION  
WITH SENATORS DeCONCINI AND LEAHY

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5. I understand that you may have some misgivings about foreign aid through multilateral institutions. The House action, however, presents serious threats to this country's interests and I ask you, therefore, to support the Administration's position.

THE PRESIDENT HAS SEEN.

*McChesman*  
*Eagleton*

5

TALKING POINTS FOR THE PRESIDENT'S CONVERSATION  
WITH SENATOR INOUE

1. Since the Senate Appropriations Committee will consider the FY 1978 appropriations bill for the international financial institutions soon after the recess, I want you to know that I am deeply concerned by the earmarking provisions and funding levels in the House version of the bill.

2. Measures such as the Young Amendment on specific countries, and the Moore Amendment on specific commodities, which require the United States to impose conditions on the use of its contributions by these institutions would have extremely serious implications for the world economy and for U.S. foreign policy. The banks simply could not accept our contributions on such terms. President McNamara of the World Bank has informed me that there is no way around this legal prohibition.

3. Such earmarking would thus threaten to disrupt the multilateral organizations which are an integral part of the international economic system that has been so carefully constructed since World War II:

- IDA V would collapse.
- The Asian Development Fund and Inter-American Development Bank would be out of funds by late 1977 or early 1978.
- The United States would be viewed as reneging on one third of its total foreign assistance, raising major problems both with the developing countries and the other donor countries -- who would once again be left hanging by a U.S. failure to make good on its international pledges.
- I ask your help in assuring that the Appropriations Committee and Senate do not adopt similar provisions.

4. I am also requesting your support for adoption of a bill with funding levels as close as possible to those which I originally requested:

- As you know, the Administration is requesting a total of \$2.6 billion for the banks in the FY 1978 appropriations bill.
- Of this total, over \$1 billion is for callable capital, which is included in the appropriations bill at your request. The chances of any of these funds ever leaving the Treasury are extremely remote.
- As you know, the House reduced our request for the banks by almost half a billion dollars. I hope that the Senate will come as close to my original funding request as possible, and believe that any further reductions from the level recommended by the House Appropriations Committee (\$2,123 million) would seriously impair our ability to participate fully and meaningfully in their ongoing activities.

5. We plan to work in the Senate to ward off restrictive earmarking provisions and further funding reductions. I would like to have your thoughts as to how we might proceed, especially with your subcommittee members. Would it be helpful if I, or Secretaries Blumenthal and Vance, were to meet with you and your subcommittee?

THE WHITE HOUSE  
WASHINGTON

July 14, 1977

Jim Fallows -

The attached was returned in  
the President's outbox. It is  
forwarded to you for your  
information.

Rick Hutcheson

RE: TALKING POINTS - JULY 13,  
1977

THE PRESIDENT HAS SEEN.

*Jim - This is as near  
nothing as I've  
ever had -*

Proposed Talking Points for President Carter

Dinner Toast, July 13, 1977

Prepared by State and NSC, revised by Speechwriting Office *J*

---

Chancellor and Mrs. Schmidt, Minister and Mrs. Genscher,  
distinguished guests, ladies and gentlemen:

1. In your opening pleasantries, you might say something like this:

"My preparations for your visit, Mr. Chancellor, have been not only political and economic, but also musical-- I have been listening to a great deal of Bach. And I must say that I prefer a Brandenburg Concerto to any other kind of briefing."

(Chancellor and Mrs. Schmidt love Bach.)

2. We have completed the first round of talks on an agenda that is, by any measure, comprehensive.

--That agenda reflects the wide range of common interests and our determination that the industrial democracies must work together to address these issues.

3. The talks have reaffirmed the importance of a close relationship between the United States and the Federal Republic.

--Vice President Mondale emphasized this during his talks in Bonn last January, as you and the Chancellor did in London last May.

4. We share an awareness that joint German-American effort is essential to our ultimate success.

--We have been fortunate in achieving over the years a wide identity in our views on world affairs.

--To be sure, there are occasional differences. That is inevitable between close friends and allies whose interests overlap so widely. But those differences go only to tactics, not to purposes. They involve only questions of how best to achieve common objectives.

5. No field is more critical than security. You and the Chancellor have had a thorough exchange on the range of problems in this area and have made progress.

6. We have also been discussing ways to promote further relaxation of tensions between East and West.

--There is agreement on a basic approach to the Belgrade conference in the fall. It must include a full, constructive examination of the implementation of the Helsinki Final Act, as well as a discussion of how to move forward in the CSCE process.

--The United States and the Federal Republic are sister democracies, both fundamentally committed to human rights. Both will continue--together and in our own ways--to challenge forces that degrade the human spirit.

--And both will continue to seek to build a firmer foundation for peace, both in Europe and in the world.

7. Economic issues are also critical, not only to our two countries but to others as well--North and South.

--We have examined the lessons to be learned from the efforts so far to enhance the North-South dialogue and reduce the gap between the rich and poor nations.

--We have reaffirmed our commitment to maintain and expand our liberal trading system.

--We have continued to discuss how our two countries, in their roles as engines of the world economy, can further contribute to general recovery from the recent recession.

I ask you now to join me in a toast to the health of the President of the Federal Republic of Germany, the well-being of Chancellor Schmidt and our distinguished guests, and the continuing friendship between the peoples of our two countries.

# # #

THE WHITE HOUSE  
WASHINGTON

July 14, 1977

MR. PRESIDENT:

The attached memorandum is referred  
for your information.

Frank Moore

MEMORANDUM

THE PRESIDENT HAS SEEN.

*for the president*

THE WHITE HOUSE  
WASHINGTON

July 12, 1977

*C*

TO FRANK MOORE

FROM DAN TATE *F.M.*

Should the President decide to go forward with the so-called neutron bomb, I believe that the Senate would overwhelmingly affirm his decision. This is also Senator Byrd's opinion.

The Senate imposed the two House veto on us not because of substantial opposition to enhanced radiation weaponry (though there are some who do oppose on the grounds that it lowers the nuclear threshold) but rather because many did not want to make their decision before the President made his. Several mentioned not wanting to be put in "another \$50 rebate" situation "where we got out on a limb and the President sawed the limb off."

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300 p.m.  
THE PRESIDENT HAS SEEN.

MEETING WITH JOHN VAN DE KAMP  
CANDIDATE FOR FBI DIRECTOR

Thursday, July 14, 1977  
3:00 p.m. (10 minutes)

From: Mary C. Lawton, U.S. Department of Justice and  
Robert J. Lipshutz, Counsel to the President

I. PURPOSE

John Van de Kamp, District Attorney for Los Angeles County, is among the five individuals recommended by the Committee on Selection of the Director of the FBI. He will be interviewed extensively by Attorney General Bell at 1:30 p.m. on July 14, and will then meet briefly with you that afternoon.

II. BACKGROUND, PARTICIPANTS AND PRESS PLAN

- A. Background: Mr. Van de Kamp is presently District Attorney for Los Angeles County, the largest law office in the country outside of the U.S. Department of Justice. He was temporarily appointed to that position by the County Board of Supervisors and was subsequently elected to a full term. Prior to that time he served as the Federal Public Defender in Los Angeles and United States Attorney in Los Angeles. For a brief period he also served as Director of the Executive Office of U.S. Attorneys in the Justice Department in Washington. He has been active in Democratic politics in the State of California when not serving in federal positions and ran against Barry Goldwater, Jr. for Congress in 1969. A copy of his resume is attached to this briefing paper.
- B. Participants: John Van de Kamp  
The Vice President
- C. Press plan: Due to the short time available for you to talk with Mr. Van de Kamp, no press or photographers have been scheduled for this meeting.

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JOHN K. VAN DE KAMP  
District Attorney  
Los Angeles County

AGE:

- 41 - born February 7, 1936  
at Pasadena, California

RESIDENCE ADDRESS:

- 489 Prospect Terrace  
Pasadena, California 91103  
Telephone: (213) 795-5218

BUSINESS ADDRESS:

- 210 West Temple Street  
Room 18000  
Los Angeles, California 90012  
Telephone: (213) 974-3611

EDUCATION

<u>School</u>	<u>Years</u>	<u>Degree</u>
Dartmouth College	1952-1956	B.A.
Stanford University	1956-1959	LL.B.

MILITARY SERVICE

<u>Branch</u>	<u>Years</u>	<u>Grade</u>
U. S. Army (Active)	10/59-4/60	Private First Class
Army National Guard	4/60-8/65	Private First Class

EMPLOYMENT

<u>Agency</u>	<u>Location</u>	<u>Dates</u>	<u>Duties</u>
Department of Justice	Los Angeles, CA	7/60-1/62	Assistant U. S. Attorney. Assigned to criminal trial and grand jury investigations.
Department of Justice	Los Angeles, CA	1/62-5/64	Chief, Criminal Complaint Unit, headed a group of attorneys who were responsible for the intake screening of all Federal criminal cases prosecuted in Central District of California.
Department of Justice	Los Angeles, CA	5/64-10/64	Assistant Chief, Criminal Division, assisted with and responsible for those cases prosecuted in Central Division of California.
Department of Justice	Los Angeles, CA	10/64-7/66	Chief, Criminal Division, directed all activities of attorneys involved in the prosecution of all Federal criminal cases.
Department of Justice	Los Angeles, CA	7/66-11/66	Chief Assistant, U. S. Attorney, assisted the U. S. Attorney in directing the activities of 46 attorneys and 60 clerical employees in the diverse criminal prosecutions and civil cases for which that office is responsible.
Department of Justice	Los Angeles, CA	11/66-3/67	U. S. Attorney, appointed by U. S. District Court to serve as interim U. S. Attorney.

EMPLOYMENT CONTINUED

<u>Agency</u>	<u>Location</u>	<u>Dates</u>	<u>Duties</u>
Department of Justice	Los Angeles, CA	3/67-10/67	Chief Assistant, U. S. Attorney, duties continued as previously indicated.
Department of Justice	Washington, DC	10/67-8/68	Deputy Director, Executive Office for U. S. Attorneys. Assigned to special task force dealing with the "March on The Pentagon", Washington, D. C. and Chicago riots, and Resurrection City. Designated to head special unit in the Criminal Division coordinating the prosecution of selective service cases.
Department of Justice	Washington, DC	8/68-3/69	Director, Executive Office for U. S. Attorneys, supervised the activities of 93 U. S. Attorneys and their 1800 employees.
Political Candidate	Los Angeles, CA	3/69-5/69	Democratic Congressional candidate for 27th District. Won the Democratic primary but lost run-off election.
Unruh for Governor Campaign	Los Angeles, CA	7/69-4/70	Staff Director - directed initial organization efforts of the campaign in its early stages, directed speech making, public appearances and helped organize the Unruh legislative campaign.

EMPLOYMENT CONTINUED

<u>Agency</u>	<u>Location</u>	<u>Dates</u>	<u>Duties</u>
Van-Frank Investment Company	Los Angeles, CA	4/70-6/71	Consultant, Vice President and Treasurer; organized and managed a small family investment company; worked on special real estate projects for interrelated family corporations.
President's Commission on Campus Unrest	Los Angeles, CA	8/70-10/70	Assistant to Executive Director; handled administrative responsibilities and assisted in research.
Political Volunteer	Los Angeles, CA	10/70-11/70	Assisted Edward Miller in his successful campaign for District Attorney of San Diego County.
Federal Public Defender	Los Angeles, CA	6/71-10/75	Appointed by the judicial council of the Ninth Circuit Court of Appeals to organize and operate a legal staff to handle Federal criminal indigent cases; first Federal Public Defender for Central District of California; supervised a 16 Attorney staff with support personnel.
Los Angeles County	Los Angeles, CA	10/75-6/76	Appointed as Los Angeles County District Attorney by Board of Supervisors. Supervised the activities of some 2000 Attorneys in 56 separate offices. Responsible for felony prosecutions in Los Angeles County.

EMPLOYMENT CONTINUED

<u>Agency</u>	<u>Location</u>	<u>Dates</u>	<u>Duties</u>
Los Angeles County	Los Angeles, CA	6/76- Present	Elected to a full term as Los Angeles County District Attorney.

PROFESSIONAL AND  
CIVIC ASSOCIATIONS:

Los Angeles County Peace Officers Association  
Board of Directors  
California District Attorney's Association  
Board of Directors  
National District Attorney's Association  
Board of Directors  
Los Angeles County Bar Association  
California State Bar Association  
Executive Committee  
National Legal Aid and Defenders Association  
American Bar Association  
Federal Bar Association  
Board of Counselors, University of Southern  
California

WRITINGS:

"Reflections on a Lawyer" Stanford Lawyer, Vol 12 #1  
Other writings on law enforcement investigations.

POLICE RECORD:

None



3:15 PM  
THE PRESIDENT HAS SEEN.

THE WHITE HOUSE

WASHINGTON

July 13, 1977

MEMORANDUM FOR THE PRESIDENT

FROM: Jack Watson *Jack*  
SUBJECT: Meeting to Discuss FRC Proposals  
Thursday, July 14, 1977 3:15 p.m.

Attached is a package of material which you have already reviewed. It includes all of the staff's reactions to the FRC reform proposals. As you know, the major pending decision is whether or not to have a full-time "Presidential" (rather than part-time "Departmental") representative to act as Chairperson of a restructured Regional Coordinating Committee reporting to the Under Secretaries Group.

One additional item: In looking through the General Government section of the "Promises, Promises" book prepared by Stu and David last November, I came upon the following entry.

"d. State/Local Relations

- (1) Upgrading the role of regional councils representing the federal government to assist state and local officials, as well as private citizens, in dealing with federal agencies; empowering the councils to review conflicts among the various federal agencies and allowing them quick access to the highest levels of the federal government. (National Governors' Conference Remarks, 7/6/76)."

Attachment

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THE WHITE HOUSE  
WASHINGTON  
THE PRESIDENT HAS SEEN.

C

ACTION

25 June 1977

TO: THE PRESIDENT  
FROM: RICK HUTCHESON *Rh*  
SUBJECT: SUMMARY of Watson Memo, "Federal  
Regional Council Reform," and of  
Comments by Eizenstat and Lance/  
McIntyre

I. Watson's May 20 Recommendations on FRC Reform. See Tab A.

II. Reaction of Governors to FRC reform proposals.

Jack reports that his office had direct contact with 47 Governors. They were virtually unanimous in expressing dissatisfaction with the current FRCs, and in the view that there must be a more effective coordinating capability in the field. All the Governors with whom Jack's office spoke were enthusiastically in favor of a full-time presidential chairperson and for revised FRC membership, according to Jack.

III. Reaction of the Cabinet to FRC reform proposals.

Jack says that HUD, HEW, DoL, EPA, and Commerce all strongly support the reforms, and that GSA, Agriculture and VA also support the proposed changes. Commerce endorsed the recommendations while emphasizing the need to look at overall Title V Commission questions once the FRC question is settled.

DOT, Interior and CSA are doubtful that a change in FRC structure by itself will solve the problem in the absence of clear direction and support from the President and Cabinet (Jack agrees). DOT and Interior also question the elimination of the Federal Executive Boards.

There is a strong preference among both the departments and state/local officials for housing the presidential representatives in the EOP, with a clear reporting relationship to the President, according to Jack.

IV. Criticisms of the FRC reform proposals.

Jack observes that there is unanimous agreement among Lance, McIntyre, Eizenstat, Moore and Watson on the need for reform,

and that the FRC proposal should be integrated with the EOP reorganization. Frank points out that the best vehicle for passing FRC reforms would be through submission as part of the reorganization plan. However, Lance, McIntyre and Eizenstat have expressed several reservations about the proposed reforms, to which Jack has responded.

A. the "Court of Appeals" problem

Lance, McIntyre and Eizenstat have expressed management and political concerns that the proposal would overload the White House with complaints and appeals from unhappy public officials and private citizens, that the White House would become a "court of appeals" for governors and mayors for hundreds of specific problems with federal programs.

Jack observes that the problems would not come directly to the President's IGR Assistant/Cabinet Secretary, but instead would go to the Under Secretaries Group (USG), which is co-chaired by Watson and McIntyre.

Jack also points out that:

1. he and his staff already handle "ombudsman" problems, as does OMB;
2. he is working to strengthen the intergovernmental capability of departments, and is referring as many problems to them as possible;
3. a full-time chairperson would be a useful contact point on lesser issues, and might keep many matters away from Washington;
4. smaller cities/counties do not often appeal to the White House now; governors and big-city mayors frequently do -- and the proposed reforms are unlikely to change this;
5. it is a plus that some problems not now coming to White House attention would reach it under the plan; the White House should know about cross-cutting, interagency management problems;
6. the presidential representative would attempt to solve as many problems as possible in the field; single agency problems would be referred to that agency; the presidential representative would deal only with inter-agency problems.

B. competition between the White House and the "constituency service" role of Members of Congress

Eizenstat, Lance and McIntyre express concern that the FRC chairpersons might be seen by congressmen as competing with the constituency service role of Congress - bypassing congressional case work.

Jack responds that the FRC chairpersons would deal only with interagency/intergovernmental matters, not just any constituency problem. Jack says his proposal would address directly a common congressional complaint about lack of program coordination in the field.

C. adding more staff to the EOP conflicts with reorganization goals

Lance, McIntyre and Eizenstat object to adding 30 additional positions to the White House staff, while the EOP reorganization effort is trying to reduce the EOP staff. Stu mentions the possibility of other detailees and likely expansion over time. Lance and Eizenstat believe that any decisions on the FRC reform should wait until the EOP reorganization team thoroughly reviews the proposed plan. Proposals regarding additional EOP staff should be considered in the context of the overall EOP reorganization.

*Correct*  
Jack states that he does not suggest placing the FRC chairpersons or their staff on the White House payroll. Rather, he favors placing the 10 chairpersons on the EOP payroll, and drawing 20 additional positions from participating departments. Although Jack sees advantages to placing all 30 positions in the EOP, he assumes that the President's desire to cut down the total size of the EOP outweighs those advantages.

D. involving the President too directly in tough local issues

Eizenstat observes that the proposed presidential appointees in each federal region would be very powerful figures, having jurisdiction over all agencies at that level. The appointees would be in highly exposed, political jobs, viewed as direct presidential surrogates, but the White House would have little effective control over them.

Stu believes the proposal involves the White House too directly. The President or his staff may be blamed for every mistake made by the federal government at the local level.

Lance and McIntyre are concerned that the proposals would raise expectations about the President's ability to solve many tough local problems with federal programs - many of which are tough and not easily solved - and that embarrassing disappointment and disillusionment might quickly result.

Jack responds that it will be necessary to raise some hopes and take some risks if an effort is going to be made to make the system work better. He is "convinced that there is no solution to this problem that is free of imperfections and shortcomings."

E. inadequate consideration of other options

Lance and McIntyre state their opinion that other options have been inadequately considered. They mention several:

1. having the FRC chairpersons selected from among the best regional directors, reporting to the USG group. They concede that this is not much of a change from the present system. Jack observes, "this is exactly what we have now, and it doesn't work for all the reasons we have previously discussed."

2. have the White House and OMB work to assure that better intergovernmental and interagency coordination takes place. Jack states his enthusiastic agreement, but says this approach is clearly not an adequate response to the problems.

3. abolishing the FRCs altogether. Lance and McIntyre state that governors and the Cabinet are in agreement that the FRCs have not worked well in the past, chiefly because the chairman does not have the authority to force inter-agency or intergovernmental coordination. They acknowledge, however, that abolishing the FRCs without simultaneously trying to design a better system is unacceptable, and Jack says that "without exception, everyone we talked to rejected this as a viable option."

4. Lance and McIntyre recommend that the FRCs be abolished as currently constituted by September 30, and that the President's reorganization project be assigned the task of reviewing the problem as a priority assignment.

Jack replies that he and his staff have spent the past 4 months considering the issue. In addition to consulting with the Departments, governors, the FRCs, state/local officials, and citizens groups, Jack's review has already had the benefit of a 6-month study conducted by OMB last Fall.

Jack argues that to manage and coordinate the federal regional system better, it is necessary to put some coordinators in the field and give them a workable linkage back to Washington. He states, "whatever else we need, we do not need another study. We need to decide what we want to do, and how, so that we can put the pervasive uncertainty and inertia on this subject in the field to rest."

Jack recommends that he, Eizenstat, Jordan, Lance, Moore, and McIntyre meet with the President to discuss the matter and decide on a workable course of action.

V. Presidential Decision:

\_\_\_\_\_ Make no decision now pending review of the proposed plan and recommendations by the EOP reorganization study group. (Eizenstat)

\_\_\_\_\_ Abolish the FRCs as currently constituted by September 30; the reorganization project group should take on the problem of federal regional coordination as a priority assignment. (Lance, McIntyre)

✓ \_\_\_\_\_ Meeting between the President, Watson, Jordan, Lance, Eizenstat, Moore, and McIntyre to discuss the matter and decide on a workable course of action. (Watson)

~~Other~~ *This involves W. House so directly that EOP/FRC decision must be the same one.*

*J.C.*

Attachments:

Tab A - Watson, "Principal Recommendations Made on May 20"

Tab B - Watson, "Follow up on Federal Regional Council Reform"

Eizenstat, "Proposed Reorganization of the Federal Regional Councils"

Lance & McIntyre, "Watson Memo re Follow up on Federal Regional Council Reforms"

Watson (rebuttal), "Federal Regional Council Reform"



## PRINCIPLE RECOMMENDATIONS MADE ON MAY 20

Eliminate 26 Federal Executive Boards

Eliminate 10 Federal Regional Councils

Establish 10 Regional Coordinating Councils (RCC's), with one in each regional headquarters city

Explore making the Title V and RCC boundaries coterminous

Explore the possible elimination of Title II Commissions

Approve designation of Mid-Atlantic and Mid-America Title V Applications

### CHARACTERISTICS OF PROPOSED REGIONAL COORDINATING COUNCILS

#### Mission

- Interagency coordination in the field
- Intergovernmental liaison

#### Chairmanship

- Presidential appointee serving full-time
  - Acts as Administration ombudsman in field;
  - Reports to the Under-Secretaries Group;
  - Chairs the RCC;
  - Coordinates ad hoc working groups as needed;
  - Serves as a neutral convener and problem identifier, parallel to the role of the Secretary to the Cabinet in Washington.

#### Membership

- Reduce the core group of federal agencies from the present 11 FRC members to 5 or 6 drawn from HUD, HEW, DOC, DOT, DOE, DOL, EPA
- Ad hoc working groups as deemed necessary by the chairperson

#### Staffing

- Full-time executive assistant and secretary detailed from the Departments



THE WHITE HOUSE

WASHINGTON

June 17, 1977

MEMORANDUM FOR:

The President

FROM:

Jack Watson *Jack*

SUBJECT:

Follow up on Federal Regional Council Reform

In the course of our meeting on May 20th on the Federal Regional Presence, you asked for clarification on three issues before making a final decision on our proposals:

- o What is the reaction of the Governors to the proposal?
- o What is the reaction of the Cabinet?
- o How do we avoid making the White House a "Court of Appeal" for a wide array of state and local problems if we heighten their expectations by placing a "Presidential representative" in the field?

Reaction of the Governors

The proposals we made to you were drawn from suggestions and comments we received from Governors, Under Secretaries, Public Interest Groups, FRC Chairpersons and Executive Directors, and others. Over the past few weeks we have had direct contact with 47 Governors. They were virtually unanimous in expressing their dissatisfaction with the current FRCs but were equally consistent in the view that there must be a more effective coordinating capability in the field.

We received enthusiastic support for a full-time Presidential chairperson and for revised FRC membership from all of the Governors with whom we spoke.

Reaction of the Cabinet

Of the most likely five core ROC departments (HUD, HEW, Commerce, DOL, and EPA), all strongly support the reforms. HUD describes the proposal as "reinforcing the goals of this Department." HEW states that we "badly need effective problem solvers in the field" and that the proposal "holds real promise for achieving this purpose." EPA and DOL expressed "enthusiastic"

support. Commerce endorsed the recommendations while emphasizing the need to look at overall Title V Commission questions once the FRC question is settled. Reactions from other departments vary: DOT, Interior and CSA are generally doubtful that a change in FRC structure by itself will solve the problem in the absence of clear direction and support from the President and the members of the Cabinet (I agree); DOT and Interior also question elimination of the Federal Executive Boards; and GSA, Agriculture and VA support the proposed changes.

Several departments cited the parallel between the role of the Presidential representative in the field and the Cabinet Secretary/IGR Assistant in Washington. There is a strong preference among both the Departments and state and local officials for "housing" the Presidential representatives in the EOP, with a clear reporting relationship to the President.

#### White House as "Court of Appeal"

Some have expressed management and political concerns that, under the proposal, the White House might become overloaded with complaints and appeals from unhappy public officials and private citizens. In a "worst case" situation, the negative impact of the problem might outweigh the advantages of the proposal. These concerns are counterbalanced by the following factors:

- o Under the present arrangement, my staff and I already handle "ombudsman" problems, as does OMB. In my opinion, that function is not only an appropriate part of our role, it serves as a very useful early warning system.
- o We are actively working to strengthen the intergovernmental capability of the Departments and are referring as many problems as possible to them. This approach is significantly reducing the burden on us and reinforcing the appropriate departmental role in this area.
- o Smaller cities and counties do not often appeal to the White House now, and are not likely to do so any more under the proposed arrangement. On the other hand, Governors and big city mayors frequently contact White House staff members now, and will continue to do so on important issues no matter what organizational structure we adopt. At the same time, a full-time chairperson would serve as a useful contact point on lesser issues and would actually keep many matters away from Washington.

- o Although some problems not now coming to our attention would reach us under the proposed plan, I think that's a plus. It is the cross-cutting, interagency management problems occurring in the field which we need to know about in order to do our jobs well.
- o The Presidential representative would systematically refer problems involving a single agency to that agency. His/her mandate would extend only to inter-agency problems. Moreover, his/her clear instruction would be to resolve as many problems in the field as possible and to use the lead agency concept to the maximum extent.
- o Finally, when confronted with the drawbacks of both the current arrangement and the alternative reforms, I think the limited risks of the proposed approach are worth taking.

#### White House Staff Reactions

As a follow up to our meeting with you, I have had discussions with Stu, Frank, Mark Siegel, Harrison Wellford and Jim McIntyre. All agree with the need for major reform of the FRCs and believe it would be valuable to have a full-time Chairperson in each of the ten revised regional bodies.

There is also a unanimous view that any decision to implement the FRC proposal should be integrated with the EOP reorganization. We have worked with the reorganization staff, and the proposal you receive from them will include a suggestion on how to implement the FRC proposals in the context of their overall plans. Frank Moore particularly made the point that the submission of the reorganization plan to Congress provides the best vehicle for getting approval of the FRC reforms.

Stu and OMB expressed concern about the "Court of Appeal" problem addressed above. As a further protection against bringing too many case-work problems too close to the President, OMB and I jointly recommend that the Chairpersons report to the Under Secretaries Group, (USG), rather than directly to the Assistant to the President for Intergovernmental Relations. The USG is co-chaired by Jim McIntyre (or his designee) and by me.

Stu also expressed concern that the role of the Chairpersons might be seen by many Congresspersons as competing with their constituency-serving role. On the other hand, one of the most frequent complaints/criticisms voiced by members of Congress relates to lack of program coordination in the field; the proposal directly addresses that concern. Moreover, as we have defined the role of the Chairperson, he/she would not deal with any constituency issues but only with interagency-intergovernmental matters. I am convinced that if we are to manage the government more effectively, the intergovernmental problems now going to the Congress must also be brought to our attention.

THE WHITE HOUSE

WASHINGTON

June 17, 1977

MEMORANDUM FOR:

THE PRESIDENT

FROM:

STU EIZENSTAT *Stu*

SUBJECT:

Proposed Reorganization of the  
Federal Regional Councils

I agree with Jack that the Federal Regional presence may need reform. I think some of his proposed changes offer real possibilities for such reform. I do have several concerns, however, with the proposed changes.

1) I think any decisions should await the ongoing study of the Executive Office of the President. The effects on the Executive Office of the President must be carefully considered. I am concerned that the placement of the regional council payroll on the EOP will not only balloon the size of the EOP (initially 30 additional slots are contemplated, but that excludes the expected detailees and the likely expansion over time), but will also bring so many federal regional problems directly to the White House. Further study is needed, I believe, to determine whether these concerns are justified. I recommend, therefore, that the ongoing reorganization study of the Executive Office of the President be allowed to review the proposed plan and make its objective recommendations.

The importance of having the EOP study team review the proposal cannot be overemphasized. Not only does the team bring the experience and knowledge about the EOP accumulated over the past several months, but it deserves the opportunity to comment on a proposal which can affect significantly the organization of the Executive Office of the President. The study team's credibility will be impaired if changes in the EOP are made independent

of the team's opportunity to at least consider those changes and make recommendations consistent with the overall EOP reorganization. If there is a strong possibility, for instance, of having 30 additional EOP employees, the study team should have the opportunity to factor that possibility in its recommendations on the staff size of other EOP units.

2) One of the difficulties I see in placing an individual in the regions with direct White House ties will be the concern of members of Congress that, when there are problems with federal programs, constituents tend to contact their Congressman or Senator. Solving those problems has become a major activity for members of Congress. With the creation of a strong federal White House presence in the regions, it is possible that problems will filter to the White House and bypass the Congress. If that were to occur, I assume many members of Congress would be upset with the loss of one of their main links to constituents. I think Frank should carefully review the proposal with members of Congress prior to any final decision by you.

3) The Presidential appointees in each federal region will be very powerful figures having jurisdiction over all agencies at this level. Those appointees will be in highly exposed, political jobs. They will be viewed as direct Presidential surrogates---yet we will have little effective control over them.

4) The procedure by which the regional council reports back to Washington involves too directly the White House and thus the President. The President or his staff may be blamed for every mistake made by the Federal government at the local level.



EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

June 20, 1977

MEMORANDUM FOR THE PRESIDENT

FROM: BERT LANCE

JIM MCINTYRE

SUBJECT: Watson 6/17/77 Memorandum re Follow Up on Federal  
Regional Council Reforms

This is the OMB response to Jack Watson's subject memo to the President on Federal Regional Council reforms.

OMB is in agreement that the current Federal Regional Council system has not worked well and should either be abolished or strengthened but not be allowed to continue as in the past.

However, OMB disagrees with, and does not endorse the recommendation that the Chairmen of the new structure be Presidential appointees confirmed by the Senate, serving full time in each of the ten regions, and reporting to the President through the Assistant to the President for Intergovernmental Relations for the following reasons:

- It brings the President in too closely to hundreds of program management issues that will arise when state and local officials bring their detailed program complaints to the proposed Presidential Chairmen. The President should not be a "Court of Appeals" for Governors and Mayors on hundreds of specific problems with federal programs.
- We are in disagreement that 30 positions should be added to White House staff for this purpose as proposed while the EOP Reorganization effort is trying to reduce EOP staff. The proposal should be considered in the context of the overall EOP reorganization and its priority measured against other EOP proposals for change.
- We are in agreement with Stu Eizenstat's concern that Congress might see the full time White House Chairmen in

each region as competing with their constituency-serving role. This could cause a serious problem in attempting to deal with Congress on Reorganization proposals.

- Expectations will be raised in state and local officials that the assignment of a White House official reporting to the President will solve many of their problems with federal programs. But the underlying problems are tough and not easily solved and the proposed Chairmen will have no authority over agency programs to make the desired changes. Disappointment and disillusionment can come early and embarrass the President.

It is also our opinion that other options have not been adequately considered. One is to have the Chairmen not assigned to EOP at all but rather be selected among the best Regional Directors in the core agencies and report to a greatly re-invigorated Under Secretaries Group chaired by Jack Watson and Jim McIntyre. This would have the advantage of not raising the EOP staff issue nor Congressional concern. The disadvantage is that this is not much of a change from the current system.

Another option is to have both the White House and OMB, working with the Under Secretaries Group and agency intergovernmental liaison officers, assure that better intergovernmental and inter-agency coordination takes place. The White House Intergovernmental office would be involved in overall intergovernmental policy while OMB Intergovernmental Relations staff would work out the intergovernmental management problems on a day-to-day, ad hoc basis both in Washington and in the field.

Another option that should be seriously considered is to abolish FRC's altogether. The Governors and the Cabinet are in agreement they have not worked well in the past, chiefly because the Chairman does not have the authority to force interagency or intergovernmental coordination. The current proposal does not solve that problem.

However, abolishing the FRC's without simultaneously making the effort to design a better system to more effectively coordinate federal program delivery is unacceptable. Therefore, in considering all of the above arguments, I recommend that the FRC's be abolished as currently constituted by September 30th and the President's Reorganization Project be assigned the task of reviewing the problem of federal interagency and intergovernmental coordination in the delivery of federal resources to the public and to state and local officials throughout the country as a priority assignment.

THE WHITE HOUSE

WASHINGTON

June 23, 1977

MEMORANDUM FOR: THE PRESIDENT  
FROM: Jack Watson *Jack*  
SUBJECT: FEDERAL REGIONAL COUNCIL REFORM

After struggling with this issue for several months, I have concluded that it is like the proverbial tar baby: every time I give it another lick or a good swift kick, I get further caught up in the problems.

After all is said and done, there is really only one issue involved in a review of the federal regional presence:

- Do we want to try to manage the regional activities of the federal government more effectively, or not?

If we do not, we can leave the system (which everyone acknowledges to be a failure) as it is, or we can abolish even the semblance of a federal coordinating and implementing capability outside of Washington.

On the other hand, if we want to try to make the system work better, by managing and coordinating it better, we need to put some coordinators in the field and give them a workable linkage back to Washington.

I am attaching three short memoranda for your review:

- One from me reporting the results of our survey efforts since the meeting with you on May 20th in answer to the questions you posed;
- A memorandum from Bert Lance and Jim McIntyre commenting on my memorandum; and
- A memorandum from Stu.

I apologize for submitting three separate memoranda on the subject, but, since all three are brief, thought it best to let you have the full flavor of everyone's views, rather than to summarize them. I tried to respond to Stu's concerns in my attached memorandum and have only these comments to make to Bert's and Jim's memorandum of June 20th. I have said all of these things directly to Bert and Jim.

(1) As is clear in my attached memorandum, I do not suggest that the ten regional chairpersons report to me. On page 3 of that memorandum, I suggest that they report to the Under Secretaries Group which is co-chaired by OMB and myself. I also do not suggest that the positions created be confirmable posts.

(2) I also do not suggest the placement of the chairpersons or their staff on the White House payroll. I did not address that issue in my memorandum and, in fact, suggested on page 3 that implementation of your decision on this subject should be integrated with the overall EOP reorganization. My personal view is that only the ten chairpersons should be added to the Executive Office of the President (not the White House staff), and that the total of 20 positions necessary to staff all ten chairpersons be drawn from the participating departments. Although there are definite advantages to placing all 30 positions in the EOP, I have assumed that your desire to cut the total size of the EOP outweighs those advantages.

(3) Bert's and Jim's points about possible adverse Congressional reaction and raising expectations of state and local officials are briefly addressed in my attached memorandum. Of course the problems are tough and not easily solved, and of course neither this proposal, nor any other, will be a panacea. At the same time, if we are to try to do something to make the system work better, we will necessarily raise some hopes and take some risks. I am convinced that there is no solution to this problem that is free of imperfections and shortcomings.

(4) As to consideration of other options, we have spent the last four months considering all the options outlined on page 2 of Bert and Jim's memorandum and countless others. Our review of the whole subject had the benefit of a six-month study of the FRC's, which was conducted by OMB last Fall. In addition to the OMB study, we have consulted endlessly with the Cabinet Secretaries, Under Secretaries and other departmental people; all the Governors; all of the FRC's and their staffs; other state and local officials; and citizens' groups. Our recommendations emanate from all that consultation and our own analysis and synthesis of what we learned.

My comments on the four options mentioned by Bert and Jim are as follows:

- The first option suggested by Bert and Jim is to have one of the departmental regional directors also serve as chairperson of the Regional Coordinating Commission. This is exactly what is done now, and it doesn't work for all the reasons we have previously discussed.

- Their second option is basically a proposal for better intergovernmental and interagency coordination in Washington. I enthusiastically endorse that goal, but it is clearly not an adequate response to our coordination and communication problems in the field.
- Their third option is to abolish the FRC's altogether and substitute nothing. Without exception, everyone we talked to rejected this as a viable option and stressed the pressing need for improved coordination and implementation mechanisms outside of Washington.
- Their final option, and the one apparently favored by Bert and Jim, is to study the matter further while committing ourselves to abolishing the FRC's by September 30th. Whatever else we need, we do not need another study. We need to decide what we want to do and how, so that we can put the pervasive uncertainty and inertia on this subject in the field to rest.

I recommend that you sit down with Bert, Jim, Stu, Ham, Frank, and me to discuss the matter and decide upon a workable course of action.

THE WHITE HOUSE  
WASHINGTON

July 14, 1977

Stu Eizenstat -

The attached was returned in the President's outbox. It is forwarded to you for your information and appropriate handling.

Rick Hutcheson

cc: The Vice President  
Bob Lipshutz  
Frank Moore  
Jody Powell  
Jack Watson  
Bert Lance  
Charlie Schultze

RE: NO-FAULT AUTOMOBILE INSURANCE

Electrostatic Copy Made  
for Preservation Purposes

THE PRESIDENT HAS SEEN.

THE WHITE HOUSE  
WASHINGTON

July 8, 1977

MEMORANDUM FOR:

THE PRESIDENT

FROM:

STU EIZENSTAT *Stu*  
MARY SCHUMAN *MS*

SUBJECT:

No-Fault Automobile Insurance

The Department of Transportation will testify July 13 on legislation that would establish federal minimum standards for no-fault automobile insurance. No-fault bills have been considered in Congress for at least seven years. The House Committee has never reported it, and while the Senate passed no-fault in 1974, it defeated it last year by a narrow vote. We are told that if we endorse no-fault, there is a reasonably good chance that it will pass this Congress.

Brock Adams, Esther Peterson and Patricia Harris recommend that we endorse federal standards for no-fault. CEA, the Department of Commerce and the General Services Administration also support it. The Justice Department states that federal no-fault will significantly reduce the number of motor vehicle personal injury lawsuits.

In general, they support federal no-fault because:

- More of the premium dollar would be returned to the victims in the form of benefits
- All seriously injured victims would be guaranteed recovery; under the fault system 45% of seriously injured victims receive nothing
- Auto accident litigation would be reduced.

Comparison of Federal and State No-Fault

The House and Senate bills, which are identical, require states to enact within three years a no-fault law that meets federal minimum standards. Federal minimum standards require drivers to purchase no-fault insurance

for \$100,000 in medical payments and \$12,500 in wage loss. A victim can sue for any damages which exceed these amounts. A lawsuit for "pain and suffering" cannot be brought unless the victim suffers "permanent disfigurement" or is impaired for more than 180 days.

The bill would require all states, including the sixteen states with no-fault, to change their laws. Two principal changes must be made in no-fault states:

1) No-fault benefit levels would be increased. The federal standards require a substantial increase over many existing laws (e.g., Georgia's medical benefit level is \$2,500). Benefit levels are increased so that more victims can be fully compensated under no-fault without having to bring a lawsuit.

2) Under federal standards, a victim can sue for noneconomic "pain and suffering" damages only if he suffers very serious and permanent injury. The bill thus eliminates the "dollar threshold" in most state plans which permit a victim to sue after incurring a certain level of doctor bills. (In Georgia, for example, victims can sue if medical costs exceed \$500.)

The thresholds are eliminated in order to reduce litigation and large pain and suffering awards, so that greater benefits can be paid out without raising premium costs.

The elimination of the dollar threshold is perhaps the most important feature of the federal bill.

Dollar thresholds are generally blamed for the mixed results of state no-fault plans. Unless all but the most serious injuries are eliminated from the fault/lawsuit system, a large portion of the premium dollar is spent on litigation and investigation, and substantial no-fault benefits cannot be paid without increasing premium costs.

A comparison of Michigan and New York no-fault plans illustrates the effect of low thresholds on premiums. Michigan's plan is very similar to federal standards: lawsuits are permitted only for serious injuries, and

there is no dollar threshold. In contrast, New York permits lawsuits for pain and suffering if medical expenses exceed a \$500 threshold.

In both states, a policyholder pays almost the same amount for the first party, no-fault benefits portion of the premium. However, since the \$500 threshold in New York permits many lawsuits, New Yorkers pay considerably more for that part of the premium which covers damages for tort claims not covered by no-fault. In New York he pays \$47.23 for insurance against tort claims; in Michigan where the tight threshold strictly limits lawsuits, the policyholder pays only \$18.11.

State No-Fault Experience. You made no commitment during the campaign on no-fault and said you would like to study the state experience before making a decision. The Department of Transportation has just completed a study which concludes that:

- No fault is compensating more accident victims more completely and more equitably for their economic losses.
- Benefits are being paid more quickly, and victims can concentrate on recovery rather than restitution.
- Litigation has been reduced in many no-fault states.
- It is difficult to generalize about the effect of no-fault on premium levels. Most of the recent rate increases have been from the property damage portion of the premium, which is not part of no-fault under federal standards.

In Michigan, whose plan most closely resembles federal standards, premiums did not change from its enactment in 1973 to 1975. Since 1976, increases averaged 25 to 30% but according to their state insurance commissioner, these increases are less than increases in other states. Governor Dukakis testified this year that bodily injury insurance rates declined under Massachusetts

no fault, but increases in property damage costs produced an overall rate increase. (Again, federal no-fault does not affect property damage.)

Johnnie Caldwell, the Comptroller General, said in a letter dated June 24 that he has employed a firm to analyze the effects of Georgia's no-fault law on both service and cost. That study has not been completed.

Federal Role. The most difficult issue is whether the federal government should become involved in no-fault. The agencies believe that a federal role is necessary because:

- State no-fault plans have been so inadequate that the no-fault concept is in jeopardy. Low thresholds in some states have failed to reduce litigation, and have kept premium levels high. (DOT, HUD, Esther Peterson)
- Conflicting state laws prevent certain and speedy recovery in a highly mobile society.
- No state has adopted a no-fault law since 1975. A federal initiative is needed if consumers nationwide are to have the benefits of an effective no-fault system. (DOT, Esther Peterson)
- Patricia Harris says no-fault will particularly benefit the poor and elderly. Under no-fault, a driver pays premiums based on his own expected loss, not upon the average loss of another driver who may sue him. Because the elderly will be compensated primarily by Medicare and Social Security, and because the earnings loss of poor people is lower, they should pay lower premiums.

The legislation minimizes the federal role as much as possible. It establishes a five-member review panel which reviews state laws for their compliance. If a state does not enact a law which complies with federal standards, the federal standards go into effect, but the state is given the option of administering the plan. The federal government administers the federal standards only if a state chooses not to do so, presumably an unlikely occurrence.

Congressional Prospects. Federal no-fault is strongly supported by the AFL-CIO and consumer groups. Newspaper editorials on no-fault are very favorable. It is opposed vigorously by the trial lawyers and most state government officials. The insurance companies are split.

Recommendation. Although the issue of a federal role is a difficult one, we concur with Secretary Adams and the other agencies that we should endorse no-fault. No-fault is a more humane system; the better state plans have succeeded in providing more benefits to victims and no-fault has not produced premium increases that exceed the rise in the inflation rate. The federal role is minimized and seems justified to extend no-fault benefits nationwide, and to improve many state plans.

William Nordhaus of the Council of Economic Advisers (CEA) points to certain concerns with no-fault (attached memo) but states, on behalf of CEA, that "We are in general agreement with the approach to no-fault auto insurance taken in the current proposals, S.1381 and H.R. 6601. A strong case has been made that reform of the tort system of liability assignment and compensation is necessary."

It should also be recognized that the federal government would benefit from the reduced litigation and administrative costs which arise under the Federal Tort Claims Act, since like any other automobile owner, the federal government would provide no-fault coverage.





EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

JUL 11 1977

MEMORANDUM FOR: THE PRESIDENT  
FROM: Bert Lance *BL*  
SUBJECT: Auto No-Fault

If a state does not enact a no-fault law which meets Federal minimum standards, the Federal minimum standards automatically go into effect; all contrary state statutes or case law is abolished. A state may still elect to continue to administer the Federal no-fault plan. This technique avoids a potential constitutional problem when a state is forced to administer a Federal no-fault program.

The draftsmen of the bill believe that all states will want to continue to administer the insurance laws. They assume that insurance companies themselves do not want to be regulated by the Federal government. Also, the states derive considerable amounts of tax revenues from premium taxes. These taxes are in lieu of corporate income taxes which are difficult to apportion between the states. A premium tax is levied on the premium transaction itself. Although this tax may continue to be levied by the state after a Federal take-over absent a specific prohibition in the bill, the states may feel sufficiently threatened by the possibility of losing this revenue source to voluntarily administer the Federal alternative plan.

If the Federal government has to administer the alternate plan, the costs incurred by the Federal government for administration are speculative. We could cover those costs by fees charged to the insurance companies. Of course, the more involved we become in rate-setting activities, the more costly the program would be. (Notice should be taken of the fact that the Congressional Budget Office has estimated that the Federal government would save about 7.5 million dollars as a self-insurer of a large fleet of automobiles).

If the Federal government has to administer the alternate plan, the costs of enforcing the plan would be small and born by the courts. The Attorney General has indicated that the elimination of tort suits would decrease the number of cases brought. In those remaining cases, the courts would simply apply the rules promulgated in the alternative plan. Presumably most individuals would voluntarily obtain no-fault insurance policies because their ability to bring a negligence action would be abolished in almost all cases.



COUNCIL OF ECONOMIC ADVISERS  
WASHINGTON

CHARLES L. SCHULTZE, CHAIRMAN  
LYLE E. GRAMLEY  
WILLIAM D. NORDHAUS

July 7, 1977

MEMORANDUM FOR: JACK WATSON  
STU EIZENSTAT  
JIM MCINTYRE

FROM: William D. Nordhaus *W Nordhaus*

SUBJECT: No Fault Auto Insurance -- S. 1381 and H.R. 6601

We are in general agreement with the approach to no-fault auto insurance taken in the current proposals, S. 1381 and H.R. 6601. A strong case has been made that reform of the tort system of liability assignment and compensation is necessary.

At the same time, we note that the magnitude of the proposed change is immense. There is still much that is unknown about no-fault. The experience of different states that have enacted no-fault to date has been quite different, and some plans have not been well-designed. In addition, automobile no-fault will set an important precedent for other areas--medical and legal malpractice and product liability. We should be sure that we have carefully studied various aspects of no-fault before we make a final decision.

On the particular legislation, we have some reservations. These involve the possibility of higher accident rates, the manner in which no-fault insurance premium levels are determined, and the treatment of pain and suffering. Due to their importance these are discussed at some length below.

(1) An early criticism of no-fault insurance was that accident rates might be adversely affected. To our knowledge, no convincing evidence has been advanced one way or the other on this proposition.

The Department of Transportation does offer some evidence in its recent draft study of State experience with no-fault.\* DOT's summary argument is quoted below:

"(L)ooking at accident rates over the 1970-1975 period for each of the no-fault states, no discernible jump in rates following the institution of these states' no-fault laws can be found. In fact, the accident rate trend for each state generally follows the gradual downward aggregate trends for U.S. ... accident rates." (p. 62, emphasis added)

This is an inadequate review of the evidence. First, it is dangerous simply to use "eyeball" analysis. For example, DOT correctly points out that only 4 (or 25 percent) of the 16 no-fault states experienced a rise in non-fatal accident rates in the year during which no-fault became effective. However, an equally valid observation is that of the 11 states for which data is available 6 (or 55 percent) did experience higher accident rates during the year following the implementation of no-fault. Of the 15 states which had effective no-fault by 1975, 9 states (or 60 percent) had higher accident rates in either the year no-fault became effective or the following year. A more careful look at the data seems worthwhile.\*\*

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\*State-No-Fault Automobile Insurance Experience, 1971-1977, draft report of the U.S. Department of Transportation, June 1977, pp. 62-66.

\*\*See Addendum.

A second problem with DOT's analysis of accident rates is that even if it is correct that accident rates have fallen, the conclusion that no-fault does not adversely affect accident rates is not justified. As DOT recognizes, other factors have been at work: the effects of the energy crisis on driving habits, reductions in speed limits, and additional safety devices on automobiles, as well as the general trend over time. We need a comparison of no-fault vs. no-no-fault states.

(2) A second reservation regarding no-fault, as presented in the proposed legislation, is related to the first. Especially if no-fault does result in higher accident rates, this situation could be ameliorated by experience-rating insurance premiums. That is, insurance premium levels could reflect the driving history of the insured. This provision would not necessitate fundamental changes in other aspects of no-fault and would have at least two beneficial effects. First, experience rating has desirable equity consequences since it would reduce the extent to which safe drivers subsidize those with good driving records. Second, experience rating would provide incentives for good driving.

(3) Finally, a major drawback of no-fault proposals considered to date--including both S. 1381, H.R. 6601, and the DOT draft study--has been the underlying notion that pain and suffering are not costs which should be compensated. This is poor economics and worse social policy. Intangibles are just as important as tangible losses. The compensation of pain and suffering damages presents an extremely difficult problem--which has not been handled well by the tort system. But, rather than ignore these problems the Council suggests that the proposed legislation be modified to provide for a review of pain and suffering damages, perhaps by the Review Panel. Such a study should examine the extent of pain and suffering damages incurred in accidents and attempt to develop equitable and economical methods of compensation for them.

Attachment

ADDENDUM: Effect of No-Fault on the Accident Rate.

CEA staff has performed a very quick analysis\* of the effects of no-fault on accident rates, removing national trends. Normalized accident rates are computed by calculating the ratio of a State's accident rate to the U.S. rate for each year and normalizing these series so that the index equals 1.0 prior to the implementation of no-fault.

The data indicate that, on average, accident rates changed by an extremely small amount. Fatal accident rates appear to have risen relative to national rates after no-fault became effective, while non-fatal accident rates fell. In both cases, however, the change was statistically very insignificant.

The uncertainty in the estimates of the effects should not be underestimated. While our estimate is that the expected change in annual national fatalities is less than 500 in either direction, the quality of the evidence is poor. Given the data analyzed so far, our estimates could be in error by 5,000 fatalities per year in either direction. The size of this uncertainty is what gives us pause.

---

\*Tim Quinn, "Effects of no-fault on accident rates."





## THE SECRETARY OF TRANSPORTATION

WASHINGTON, D.C. 20590

JUN 23 1977

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## MEMORANDUM FOR THE PRESIDENT

SUBJECT: No-Fault Automobile Insurance

Summary

I recommend that the Administration support legislation currently before the Congress (S. 1381 and H.R. 6601) which would establish a nation-wide minimum standard for state no-fault auto insurance plans.

Discussion

Beginning with Massachusetts in 1971, sixteen states have implemented some form of no-fault automobile insurance plans. During this period, the Congress has also regularly considered Federal no-fault legislation with the Senate actually passing a bill in 1974. The House Consumer and Finance Subcommittee completed three days of hearings (public witnesses) on no-fault last week; the Senate Commerce Committee has scheduled hearings (public witnesses) to begin on June 27; and a joint House/Senate hearing to receive the Administration's position has been tentatively set for July 12.

DOT Auto Insurance Study (1968-71). Much of the original impetus for the no-fault legislative movement came from an exhaustive \$2 million study of the traditional tort-based auto accident reparations system which found, among other things, that:

- Only \$.44 of each premium dollar was returned to victims in the form of benefits.
- Of seriously injured victims, 45 percent got nothing from the tort liability system.
- Auto accident litigation consumed 17 percent of the court system's resources.

- In litigated auto accident cases, the costs of lawyers and litigation expenses approximated the net benefits to victims.
- The tort liability system grossly over-compensated slightly injured victims while grossly under-compensating seriously injured victims.

State No-Fault Experience (1971-77). The DOT has recently completed a review of the experience of the sixteen states that have no-fault plans. (A brief summary of the study's findings is attached.) Generally speaking, these plans have been very successful, although some of them are very modest indeed. Some of the stronger no-fault plans such as those in Michigan and Minnesota have been outstanding successes. Benefits are higher, payment is certain and faster, rehabilitation is encouraged and litigation is reduced. With respect to cost, no-fault premium levels, when adjusted for inflation, have declined in most states.

The Federal Bills (S. 1381 and H.R. 6601). The Federal bills would provide a Federal minimum standard that all state auto accident reparations plans would have to meet or exceed. Under these standards victims would receive, regardless of fault, up to:

- (a) \$100,000 in medical benefits;
- (b) Wage replacement for one year up to \$12,000;
- (c) One year of benefits for replacement services (up to \$20 a day); and
- (d) \$1,000 in funeral benefits.

Suits in tort would be prohibited except where a victim dies, suffers permanent serious disfigurement or loss of an important bodily function, or is permanently impaired for more than 180 days.

This legislation would not affect state regulation of insurance. (A somewhat fuller summary of the bills is attached.)

The Politics of No-Fault. Personal injury no-fault plans have received wide public acceptance and approval. Virtually all of the insurance industry supports the no-fault concept, although there are some differences over details. Consumer groups strongly support no-fault. The AFL/CIO and UAW have vigorously supported no-fault.

The organized bar, particularly the trial lawyers, constitutes the main opponent. (The great strength of the bar in state legislatures is the principal reason that more states have not adopted no-fault plans and why so many of those adopted have been relatively ineffectual compromises.)

Federal action on no-fault is opposed not only by the bar but also a considerable portion of the insurance industry and most state governments. Labor (e.g., AFL/CIO and UAW), consumer groups (e.g., CFA, Consumers Union and American Association of Retired Persons), and a majority of the insurance industry support minimum Federal standards for no-fault.

Finally, it should be noted that, nationwide, no-fault receives broad editorial coverage and receives overwhelming editorial support ( 97 percent in favor) as does a Federal initiative in this area.

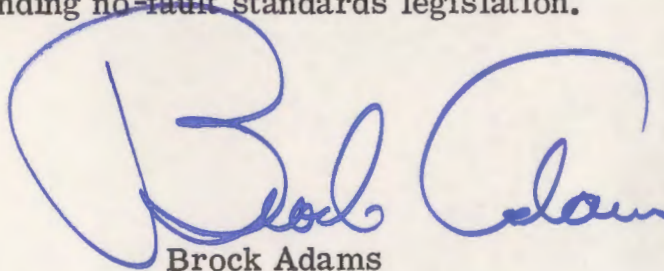
The Argument for Federal Action. Several factors argue strongly for the Federal Government to move on no-fault now:

- (1) The great diversity of no-fault plans (no one is the same as any other) is creating serious problems for both car owners and insurers. Big insurers, such as State Farm and Kemper, which once opposed Federal action, now agree that it is necessary.
- (2) The generally poor quality of state no-fault plans to date. Only three or four state plans approach adequate benefit levels.
- (3) Opponents of no-fault have succeeded in preventing further advances at the state level. No state has adopted no-fault since 1975.
- (4) The lessons that are likely to be learned from state experimentation have already been produced by the experience of the past six and a half years.
- (5) If marketplace incentives for encouraging the purchase of safer cars and safety equipment are to be created through the insurance mechanism, the reparations system must be no-fault. For example, a motorist who chose to purchase a passive restraint system could receive a reduction in his premium.

- (6) The Federal "standards" approach provides a way to ensure a more efficient and fairer accident compensation system without unduly encroaching on state insurance regulation.
- (7) Virtually all of the heretofore "unresolved" issues that mitigated against Federal action have been resolved. For example, there is now virtually unanimous opinion regarding the constitutionality of both no-fault and the proposed Federal "standards" approach to its implementation. (Former Attorney General Levi, who originally entertained some doubts about the constitutionality of a Federal approval mechanism for state plans in an earlier bill, suggested the approach taken in the current legislation.)

\* \* \* \* \*

In conclusion, I believe that the Administration should endorse strong no-fault reform and should support, with whatever modification we deem necessary, the pending no-fault standards legislation.

A handwritten signature in blue ink, appearing to read "Brock Adams", is written over the printed name.

Brock Adams

Attachments

## Summary of

### "STATE NO-FAULT AUTOMOBILE INSURANCE EXPERIENCE, 1971 - 1977"

This report reviews the operational performance of the 16 state no-fault plans that have been implemented since Massachusetts first introduced no-fault in 1971. Relying primarily on secondary sources, the study reviews the performance of these plans in terms of various benefit criteria, such as adequacy and timeliness of payment, and cost and price experience.

Despite the low tort thresholds and modest levels of first-party benefits inherent in most plans, the study found that no-fault automobile insurance works.

#### Benefits:

- No-fault is compensating more accident victims more completely and more equitably for their economic losses than did the tort liability system. The improved benefits delivered by no-fault are most clearly demonstrated by the performance of the unlimited medical benefit provisions of the Michigan, New Jersey and Pennsylvania plans.
- Depending upon the particular state no-fault plan, no-fault automobile insurance accomplishes in practice what it was designed to do in principle, i.e., provide compensation for the economic losses of accident victims in a manner more adequate and equitable than the tort liability system.
- No-fault benefits are being paid in a much more timely fashion than are insured tort liability benefits according to studies of Massachusetts, Florida, Michigan and other states.
- Significant net premium savings appear to be available to policy holders in states such as New York, New Jersey and Michigan which mandate the coordination of no-fault insurance with other public and private insurance coverages.
- No evidence was found that a shift to no-fault automobile insurance adversely affected highway safety as claimed by early critics.

Costs:

- Insurance premiums rose significantly in virtually every state examined, both rural and urban and both no-fault and tort liability, during this time period.
- Inflation appears to have been the principal factor for insurance premium increases in both tort and no-fault states during the last six years, although other factors such as shifts in accident frequencies and severities, inadequate thresholds in some no-fault states, inflation in jury awards and claim settlements, etc., have also obviously affected insurance costs.
- When adjusted for inflation, premium rates in most no-fault states between 1971 and 1977 either declined or held steady. In Michigan (the state whose plan most resembles that called for in the original DOT Auto Insurance Report and in the currently proposed Federal legislation), rates remained stable.
- The experience of the states, taken overall, does indicate that increased benefits under no-fault can be achieved through improved cost efficiency and that no-fault does not necessarily mean higher insurance premiums, since inflation and other factors are taken into consideration.

BRIEF ANALYSIS OF S. 1381 AND HR. 6601  
MAGNUSON NO-FAULT BILL

A. Basic Benefits

To have an "approved" plan, a state must enact a law that provides automobile accident victims the following minimum benefits without proof of negligence:

1. \$100,000 in medical benefits, or 2 years' medical expenses, with payment beyond that point only if determined necessary by an independent state Board (up to a cash aggregate of at least \$250,000).
2. One year's work loss benefits, essentially up to a maximum of \$12,000.
3. 365 days worth of benefits (at about \$20 a day) for services a victim must obtain as a replacement for things he cannot do for himself.
4. Funeral benefits at least equal to \$1000.

These benefit levels can be reduced if the State Insurance Commission finds that such a reduction is necessary to keep insurance premiums from rising from what they were prior to the no-fault law.

B. Liability Coverage

The law must also require each auto owner to have personal injury coverage (property damage is not covered) in an amount equal to at least \$15,000/30,000.

C. Restrictions on Lawsuits

The law must forbid tort suits for pain and suffering except if there is

1. death or permanent scarring, disfigurement, or loss of an important bodily function; or

2. "other serious and permanent injury" which results in permanent impairment or more than 180 days of total disability.

D. Requirement of Insurance

The law must require each auto owner to purchase insurance that would provide the foregoing benefits.

E. Rates

Insurance rates continue to be regulated by state law.

F. Other Requirements

The law must require payment of benefits within a certain time period, and limit cancellation of policies. States must also establish programs to investigate fraudulent no-fault claims and to review payments for medical treatments. States must also establish plans to avoid duplication in the payment of benefits.

G. Right of Reimbursement by Insurers  
(Subrogation)

The law must forbid an insurance company from seeking reimbursement from another company on the basis of fault of an insured except if the client was drinking or his accident involved a felony or if the accident involved a truck.

H. Review Panel

A 5 person panel set up within DOT as an "independent instrumentality" (the Secretary is one member, and the other four are appointed by the President) decides if a state plan meets the requirements of this Act. Its decisions are judicially reviewable.

I. Alternative No-Fault Plan

If the Review Panel does not approve a state plan, the federal minimum standards and requirements go into effect, administered by the U. S. Secretary of Transportation, unless the state indicates it will administer this plan.

THE WHITE HOUSE  
WASHINGTON

July 1, 1977

MEMORANDUM TO:

THE PRESIDENT

FROM:

Esther Peterson

RE:

Secretary Adams' Memorandum on No-Fault Automobile Insurance

I endorse Secretary Adams' recommendation that the Administration support S. 1381 and H.R. 6601. While refocusing the accident victims' compensation system is a consumer matter of major concern, it is unlikely that a nationwide system of no-fault insurance will be established if we rely solely on state initiative.

The existing fault system in the automobile area has not served the consumer well. Seriously injured accident victims must now wait an average of 19 months to receive final payment of claims. Delayed compensation may result in delayed treatment or rehabilitation, or accident victims may be forced into premature settlement of claims. Those with the most severe injuries recover only 30 percent of their economic losses, and victims with limited education and lower incomes recover a smaller percentage of their losses than do victims with higher levels of education and income.

An accident reparations system which returns benefits of only 44¢ of each premium dollar to victims, which leaves 45 percent of seriously injured victims entirely uncompensated, which produces 220,000 law suits annually, and which allocates 20 percent of the premium dollar to lawyers, is badly in need of reform.

The recent DOT study establishes that no-fault works--but only when structured properly. While 16 states have enacted no-fault systems, only one incorporates the two criteria which are necessary for an effective system:

First, a system must provide for a high level of no-fault benefits. The DOT study found that the most seriously injured 3 percent of accident victims suffer 35 percent of the economic loss. Thus, a system with a low level of benefits does not provide for those who need no-fault coverage the most.

Second, a system must limit use of the fault system sufficiently to

prevent premiums from rising more than they would under the present system. While a tort suit may be appropriate in cases involving serious injury or total disability, unbridled authority to seek compensation for non-economic losses would result in steadily increasing premiums.

No state has adopted a no-fault statute for two years, and it is unlikely that any states will act in the foreseeable future. A federal initiative is needed if consumers nationwide are to have the benefits of an effective no-fault system -- benefits which include compensation to virtually all accident victims for economic loss, prompt payment, and a reduced burden of our judicial system.

UNITED STATES OF AMERICA  
GENERAL SERVICES ADMINISTRATION  
WASHINGTON, DC 20405



July 1, 1977

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MEMORANDUM FOR:

Jack H. Watson, Jr., White House  
Jim McIntyre, White House

SUBJECT: Adams' Memorandum on No-Fault Automobile Insurance/  
Administration Position on S.1381 and H.R. 6601

Thank you for the opportunity to comment on Mr. Brock Adams' memorandum of June 23, 1977, on No-Fault Automobile Insurance. We agree with his analysis and recommend that the Administration support Bills S.1381 and H.R. 6601.

Joel W. Solomon  
Administrator



GENERAL COUNSEL OF THE  
DEPARTMENT OF COMMERCE  
Washington, D.C. 20230

JUL 1 1977

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Mr. Jack H. Watson, Jr.  
Secretary to the Cabinet  
The White House  
Washington, D.C. 20500

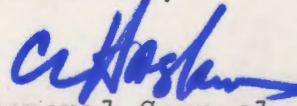
Dear Mr. Watson:

This is in response to your request for our comments upon Secretary Adams' memorandum to President Carter recommending Administration support for S. 1381 and H.R. 6601, the "No-Fault" auto insurance bills.

The Department of Commerce favors the enactment of legislation providing for federal standards for State no-fault plans along the lines of those provided for in these bills. Consequently, we are in general agreement with Secretary Adams' views.

We are, however, suggesting that consideration be given to amending the bills in certain respects. A copy of our letter to the Office of Management and Budget, commenting in detail on the bills, is attached.

Sincerely,

  
General Counsel

Enclosure



GENERAL COUNSEL OF THE  
DEPARTMENT OF COMMERCE  
Washington, D.C. 20230

JUL 1 1977

Honorable Bert Lance  
Director  
Office of Management and Budget  
Washington, D.C. 20503

Attention: Assistant Director for Legislative Reference

Dear Mr. Lance:

This is in response to your request for the views of this Department with respect to S. 1381 and H.R. 6601, identical bills

"To provide basic standards for State no-fault benefit plans for the rehabilitation and compensation of motor vehicle accident victims, and for other purposes."

This legislation would establish Federal standards for State no-fault automobile insurance plans, and an alternative plan that would be imposed upon any state failing to have in effect a plan in accordance with the basic Federal standards after two years following enactment of this legislation. A "Standards for No-Fault Benefits Review Panel" would be established within the Department of Transportation, to determine if a state plan is or remains in accordance with the basic standards. A determination of the Panel that a state plan was not so in accord would be reviewable in the U.S. Court of Appeals for the circuit in which the state is located, or in the Court of Appeals for the D.C. Circuit.

The basic standards provide for payment of:

- 1) Medical benefits up to \$100,000 (250,000 in certain circumstances);
- 2) Wage replacement for one year of at least \$12,000, (unless a lesser amount, based upon actual monthly income is agreed upon with the insurer before the accident);

- 3) Replacement services up to \$20 per day; and
- 4) At least \$1,000 in funeral and death benefits.

A person would still be permitted to bring a tort claim if he incurred certain described injuries, and state plans would have to provide for compulsory limited liability insurance coverage in this situation.

A state plan would be required to make insurance mandatory for each motor vehicle owner, and payment of no-fault benefits to uninsured motorists would be limited.

Reimbursement of insurers, for benefits paid, would not be permitted except in the case of accidents involving certain violations, and accidents involving non-passenger motor vehicles.

The bill also provides rules for resolution of conflicts of state law, and for the protection of policy holders against arbitrary cancellation, nonrenewal or modification of insurance coverage.

The Department of Commerce recommends enactment of these bills, but suggests consideration of certain amendments.

1) Medical Expense Benefits (sec. 102(a))

We suggest removing the limit on medical coverage, or, alternatively, removing the limit on optional additional coverage. Studies in Michigan have shown that it costs only \$8.00 per auto to cover all such costs above \$25,000. Consequently the cost of further extension for catastrophic claims would be small.

2) Tort Liability (sec. 102(f))

In our view, the limits of \$15,000/30,000 are too low and grossly out of line with the \$100,000 no-fault provision. As the "verbal threshold" for tort liability requires incapacitating injuries, tort liability limits ought to be at least \$50,000/100,000. At a minimum there should be a provision for optional coverage to higher limits.

3) Reduction in Benefits to Preclude Premium Increases  
(sec. 102(g))

As an alternative, we suggest raising the optional deductible.

4) Compulsory Coverage Requirement (sec. 104)

We suggest the following procedural changes:

The possession of valid, uncancellable insurance paid for at least three months should be made a condition for issuance of a registration certificate. If renewal or installment premiums are unpaid, the insurance company should notify the State authority immediately, and keep the policy in force for another 60 days. During that period, the State should revoke the automobile registration certificate and police should be empowered to remove the vehicle's license plates. Renewal of license would also be made subject to a penalty unless the insurance company certified that coverage had been continuously in force during the previous year. Change of insurance carrier would only be possible on the registration renewal date. Except for nonpayment, insurers could only cancel the policy on registration renewal date, after giving 60 days prior notice.

In addition, we would further restrict cancellation for fraud or willful misconduct (sec. 108) by providing that the insurer must maintain coverage in any event for 60 days after he has given the state and the insured written notice of cancellation.

5) Uninsured Motorists (sec. 111(c))

If the foregoing provisions were adopted, there would be few uninsured motorists. With respect to these, we see no justification for any payment of no-fault benefits. No one should have the opportunity of a "free ride" on the system.

6) Pedestrians

The bills should be more explicit about whose insurer pays in the case of a pedestrian struck by a vehicle. The definition (p. 60) of "accident" is ambiguous. How can the pedestrian be paid benefits if he is struck by a vehicle which is excluded from the plan? The fourth alternative under sec. 105(b), read in conjunction with the definition of "victim" (sec. 301(34)), could be interpreted as implying that a pedestrian, if he is an insured under a no-fault automobile insurance policy, would be paid by his insurer.

7) State Regulation of Medical and Rehabilitation Services (sec. 108(d) and (e))

While these provisions may appear to go beyond the normal purview of insurance regulation, we believe that these accountability provisions are essential. An extension of no fault will undoubtedly increase the demand for medical and hospital facilities. An "entity" or "mechanism" to investigate fraudulent claims and to establish and review guidelines for evaluating and supervising the provision and the cost of products and services will be needed. Such an "entity" or "mechanism" can consist of individuals or organizations with special expertise in the health field. In the absence of such control, the danger of fraudulent claims and excessive charges would be extremely serious.

8) Manufacturers' Liability

The legislation may result in some shifting of the costs of product liability actions. In that regard, it should be noted that manufacturers of automobiles are still subject to liability in tort although the party bringing the action has received no-fault benefits. See Section 103(e). Nevertheless, in many instances (because of the bill's relatively full coverage) there will be little incentive for persons to bring such claims. On the other hand, in some instances, no-fault payments could help fuel lawsuits. As in the case of a Workers' Compensation beneficiary suing the manufacturer of a product, the claimant will have nothing to lose and something to gain by suing the manufacturer.

It would appear that an insurer who paid no-fault benefits in an accident caused by a defect in an automobile would not have the right to be reimbursed from the automobile manufacturer or its insurer. See Section 110(b).

Probably this issue has been explored in the course of prior hearings on earlier automobile no-fault bills, but if it has not it is deserving of consideration. Can a more direct and efficient means be developed for having manufacturers of defective automobiles contribute to the no-fault system. If this can be developed, should they be given a limited tort immunity?

9) Tort Penalties

Sec. 103(c) introduces a new quasi-criminal concept in its provision for a state imposed tort penalty. There may be a due process problem arising out of the difference in the standard of proof in civil and in criminal cases. We would defer to the views of the Department of Justice with respect to this provision.

10) Determination of Premium Under No-Fault

It is arguable that more detailed consideration should be given in the bills as to how an individual's no-fault premium should be determined.

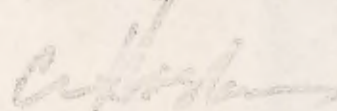
In that connection, the recent DOT study suggests that reserving practices of insurers in automobile no-fault states with relatively high medical thresholds have been substantial. See State Automobile Insurance Experience 1971-1977 at pp. 22-23. While the bill leaves the matter of rate regulation to the states, should the federal government provide any suggested guidelines on reserving practices under no-fault?

There are also important policy questions regarding rate regulation involved in these bills. For example, should a 21-year-old with a relatively poor driving record pay less in premiums than a 50-year-old person with a good driving record? In that connection, because no-fault insurance is essentially accident insurance, the latter may pay more than the former because his potential loss of earnings is greater.

In sum, one of the most important questions citizens will ask about this bill is "how much will I pay for this insurance, and how will my premium be determined?" This is a matter that deserves clarification.

Finally, while this legislation may raise auto insurance premiums somewhat, this must be weighed against the much greater certainty that accident victims will be compensated for their injuries.

Sincerely,



General Counsel



THE SECRETARY OF HOUSING AND URBAN DEVELOPMENT  
WASHINGTON, D. C. 20410

Rec'd  
7/5  
9 am

Honorable Jack H. Watson, Jr.  
Secretary to the Cabinet and  
Assistant to the President  
for Intergovernmental Affairs  
Honorable James T. McIntyre, Jr.  
Deputy Director, Office of  
Management and Budget  
1600 Pennsylvania Avenue  
Washington, D. C. 20500

Dear Messrs. Watson and McIntyre:

Re: Adams Memorandum on No-Fault Auto Insurance/Administration  
Position on S. 1381 and HR. 6601

HUD favors Administration support for the captioned legislation,  
to establish minimum Federal standards for no-fault automobile  
insurance.

We are urging Administration support for no-fault legislation  
at this time based on HUD's Federal Insurance Administration's  
seven-year involvement in this matter. The reasons for our support  
include the following:

- (1) The former Administration was nominally committed to the  
no-fault automobile insurance concept for six years, yet  
not only failed to give the necessary Federal impetus  
to this vitally-needed consumer reform but did much behind  
the scenes to prevent its enactment.
- (2) The concept itself is threatened because the glaring  
inadequacies of dollar-threshold, State measures have  
been exacerbated by inflation which has eroded the  
thresholds to the point where there is, in practical  
effect, no limitation on the use of a tort remedy and  
the insuring public is simply paying additional premiums  
for compulsory first-party benefits.
- (3) The possibility that any significant number of States will  
drastically raise the dollar threshold or move to a  
definitional type of threshold, as in Michigan, is almost  
zero.

- (4) The conflicting and incompatible reparations regimes of the States, ranging from substantial no-fault regimes, to miniscule no-fault, to pseudo no-fault, to full tort regimes constitute a balkanization which burdens commerce and impedes free movement between the States.
- (5) Unless Federal initiatives and backing achieve automobile reparations reform, the possibility of effecting vitally-needed reform in other reparations systems, such as products liability and medical malpractice, is essentially non-existent.

For example, courts in Idaho and Ohio have held that because automobile accident victims and other accident victims can recover fully for pain and suffering, limitations upon recovery of pain and suffering by medical malpractice victims constitutes an unconstitutional denial of equal protection.

- (6) True no-fault, as contrasted with the pale imitations prevalent in most States, should improve availability of automobile insurance for minority groups, and others who are now looked upon with suspicion by underwriters of liability insurance because of the fear that such applicants for insurance might fare poorly with juries as insured defendants in tort suits involving large damages.
- (7) Under a true no-fault system, automobile insurance premiums can be expected to be more in line with the economic circumstances of the insured and his ability to pay. Because youthful drivers heal faster with less medical attention and sustain less earnings loss than their more affluent elders, the premiums payable by them should reflect their lesser severity of loss and should, thus, reduce somewhat the egregiously high rates they are now called upon to pay. Similarly, because the reparation of the elderly will be borne primarily by Medicare and Social Security, and because their losses of earnings will be small, their lesser exposure can be expected to result in much smaller premiums. The poor who, by definition, have smaller income should also pay less because of their lesser exposure under a first-party, no-fault insurance regime.
- (8) No-fault is a demonstrably more cost effective mechanism for compensating the economic losses of automobile accident victims than the current fault-system. Intuitively, one would have to judge that the system costs of delivering benefits under the present system have gone up even more in the time that has elapsed since the DOT Study.

- (9) No-fault is also a more equitable means of distributing benefits than the existing fault system. The current system is built upon the fundamental anomaly that the accident victim is a legal stranger to the insurer paying the compensation benefits. The victim has no rights against such insurer unless or until he secures a final judgment against the insured tort-feasor. Moreover, the insurer has both the legal right and the economic incentive to defeat or minimize reparation or to contest the claim in the hope of effecting a smaller settlement because the claimant does not have the economic resources to await the final outcome of litigation.
- (10) No-fault delivers its benefits faster when they are most needed and aids effective rehabilitation since it provides the funds for rehabilitation promptly. To be effective, rehabilitation must be commenced shortly after the injury is sustained.
- (11) The current automobile accident reparation system is inextricably linked through State financial responsibility and compulsory liability insurance laws to automobile liability insurance. Since the motorist not only can but must insulate himself, through insurance, from the financial consequences of his tortious misconduct, it is evident that the tort remedy is wholly deprived of its deterrent and punitive powers in respect to the potentially negligent driver.
- (12) Almost no one now seriously doubts the constitutional authority to enact Federal no-fault automobile insurance legislation. For example, Professor C. Dallas Sands, of the University of Alabama Law School expressed reservations as to such authority in a paper that he wrote for the DOT Study, but since completion of that Study has stated that he is now satisfied that Congress can constitutionally act.

The amendment which HUD suggests is that the Administration propose simply to eliminate the requirement for an individual to purchase only liability insurance (since that would fly in the face of the no-fault concept).

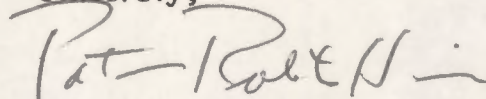
Federal no-fault, as contrasted with the inadequate State no-fault efforts, to date, continues to be perceived by the public as important, consumer-oriented legislation. Despite the fact that proposals such as S-354 have been generated by the DOT Study, completed in 1971, the former Administration did no more than pay lip service to the concept

- 4 -

and tenaciously clung to the theme of leaving its implementation to the States when it was obvious that the States could not or would not move meaningfully. The Carter Administration could claim credit for Federal standards no-fault legislation should it now support such legislation.

A paper further detailing HUD's position on this important matter is attached.

Sincerely,

A handwritten signature in dark ink, appearing to read "Pat Roberts Harris", written in a cursive style.

Patricia Roberts Harris

Attachment

cc: Brock Adams

HUD'S POSITION FAVORING FEDERAL STANDARDS  
FOR NO-FAULT AUTOMOBILE INSURANCE

1. History of No-Fault at the Federal level.

When Secretary Volpe testified on DOT's study of no-fault automobile insurance in April 1971, he strongly endorsed the no-fault concept but suggested that Congress enact a resolution giving the States 25 months to enact no-fault legislation before considering federally mandated standards. Indeed, if it were not for Nixon White House intervention, Volpe would have called for Federal standards in 1971. At the close of the 25-month period, the States' progress was not satisfactory, but the Nixon Administration failed to provide proposals for Federal action. The current Federal no-fault legislation was generated largely by the DOT study; S. 354's benefit package is very similar to that suggested by DOT. 1/

2. The States' progress in implementing no-fault auto insurance is disappointing.

The States' progress in implementing no-fault insurance has been quite disappointing. Only one State, Michigan, has enacted a no-fault plan that satisfies the minimum standards recommended by the DOT study. 2/

While a total of 15 States have enacted some form of no-fault, several retain a tort remedy for any injury which exceeds a low economic loss threshold--\$200 in medical bills (exclusive of hospital costs) in New Jersey, for example. Certain insurer groups also claim that over one-half of the Nation's population is covered by some form of no-fault. But, as noted above, only Michigan has enacted legislation which complies with minimum no-fault standards generated by DOT's exhaustive study of the automobile insurance market. 3/

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1/ The actual benefit package contained in S. 354 was developed by the Uniform Motor Vehicle Reparations Act group, which included representatives of Federal and State governments and was partially funded by DOT. This paper was prepared prior to the introduction of S. 1381 and HR. 6601, hence its references to S. 354.

2/ "A Specific Recommendation" in Motor Vehicle Crash Losses and their Compensation in the United States, at p. 133.

3/ Attached is a study by the Michigan Insurance Department analyzing Michigan's first three years of experience under that State's no-fault law.

Even in the States that have paid lip service to the no-fault concept, it has become painfully apparent that the systems have been more intent upon salvaging just as much of the tort system as possible than upon providing effective and efficient reparations on a first-party insurance basis. The minuscule dollar thresholds have been eaten up by inflation with the result that such systems have simply become tort systems with required add-on first-party benefits which do little more than raise premiums. Only a real and substantial eradication of the tort remedy can result in a true no-fault system which will not increase premiums substantially for consumers while materially improving benefits.

There is no prospect of real elimination of the tort remedy at the State level in the foreseeable future.

In view of these facts, HUD does not believe that the States have significantly advanced towards achievement of a national no-fault reparations system.

3. No-fault is a more cost effective mechanism for compensating the losses of auto accident victims than the current fault system.

In terms of cost effectiveness, empirical evidence indicates that for every \$1 of premiums paid under the current tort system, only about 43 cents goes to the victims of automobile accidents and only 14-1/2 cents actually goes to compensate victims for their out-of-pocket expenses. Under a no-fault scheme like S. 354, it has been estimated that 75 cents out of each premium dollar will reach the policyholder in benefits. Thus, a change to no-fault could achieve a 75 percent increase in the productivity of the auto accident reparations system.

Studies, including those done for the Department of Transportation, indicate total annual consumer savings of \$1.5 to \$2 billion if every State had a no-fault plan compatible with the proposed minimum Federal standards. HUD actuaries believe that the DOT study is an accurate assessment of the reduction in cost we could expect.

Measuring no-fault only by the premium costs is, however, a misleading analytical tool. The savings which would result from the shift to a no-fault system could be used either to reduce individual premiums or to increase benefits, or some combination of each. In analyzing its effect on California, for example, the study forecast an 11 percent reduction in rates but an 88 percent increase in persons receiving benefits. In S. 354 system savings are largely used for increased benefits and coverage, not lower rates.

The fault system also consumes valuable community resources including the attention of our seriously overcrowded court system. Auto accident litigation occupies 17 percent of our State courts' time and 11.8 percent of the time of our Federal district judges.

4. No-fault provides a more equitable means of distributing benefits than the existing fault system.

No-fault is not only a more cost effective means of compensating auto accident victims, but also a more equitable means of distributing benefits than the tort system. In other words, the same premium dollar provides not only more benefits, but also distributes those benefit dollars more equitably than the present system.

First, under the tort system 55 percent of all automobile accident victims go totally uncompensated. In many cases, compensation is unavailable because no one can be proven to have been at fault. In others, the innocent victim goes uncompensated because the driver at fault was uninsured and judgment proof. Estimates are that more than 18 million drivers or 20 percent of all cars on the road are uninsured, leaving their victims with little hope of compensation. These problems are largely avoided by a compulsory no-fault system, in which the driver's own insurer compensates his losses.

Second, the actual application of the present tort system of compensation is basically inequitable and particularly ineffective in compensating the seriously injured victim. The following chart, from a March 1971 DOT report, demonstrates the relationship of net recoveries to actual losses under the tort system:

Comparison of Reparation Received  
by Fatally or Seriously Injured Persons  
with Tort Recovery by Size of Loss

<u>Total Economic Loss</u>	<u>Ratio of Net Recovery to Loss</u>
1 - 499	4.5
500 - 999	2.6
1,000 - 1,499	2.4
1,500 - 2,499	2.0
2,500 - 4,999	1.6
5,000 - 9,999	1.1
10,000 - 24,999	0.7
25,000 - and over	0.3

Hence, under the current system, victims with small economic loss are generously over-compensated while those suffering serious loss are left seriously under-compensated. A true no-fault scheme like that proposed by S. 354 should result in both categories of victims being compensated their true economic losses.

5. No-fault is also more efficient in terms of providing timely compensation.

Compensation under the tort system often comes long after treatment is needed or income lost, causing severe hardship to accident victims. An average claim is not settled until 16 months after an accident and the delay

is even longer for accidents involving more serious injuries. Over half of the claims of victims with more than \$5,000 in losses are unsettled after two years. And, fewer than 8 percent of accident victims receive interim benefits of any consequence under the tort system. The result is often that needed rehabilitation is delayed, hindering medical recovery, or that the victim's family suffers a painful and extended interruption in their income-stream.

6. No-fault is more equitable not only to the victim but also to the premium payer.

Questions regarding no-fault's potentially inequitable impact on certain regions, States, and rating classifications have been raised. HUD's actuaries believe that rating practices under no-fault will be more equitable than those under the tort system. Currently, the young, the elderly, the minority, and the poor, for instance, pay much more than they would under no-fault because insurers assume that in an accident, the youth, elderly, minority or poor person is apt to injure an "average" driver who will suffer an average wage loss. Under no-fault, the income level of the insured is known and the risk he presents can be rated accordingly.

In short, premium charges under a true no-fault system are more commensurate with ability to pay, a reversal of the present rating system. Moreover, under a substantial no-fault system, the automobile insurance underwriter will no longer be principally concerned with how a prospective insured will impress a jury as defendant in a lawsuit possibly involving the limits of liability afforded by the policy. Thus, minority groups now shunned by the voluntary market because of fears that they might fare poorly before juries can be expected to receive readier acceptance under a first-party insurance system.

It is true that motorists in a very few rural States might pay minimally more in premiums under S. 354 than they do currently. Again, however, premium costs alone are a misleading measure of the program. The residents of those States will also receive significantly more in benefits. For example, many single car accidents that now go uncompensated in such States would be covered by insurance under S. 354. Thus, although drivers in these States may (under the most conservative assumptions) experience about a 10 percent increase in average premiums, the expected pay-out in benefits will increase even more substantially. For example, where \$1 in premiums under the tort system would produce 43 cents in recoveries, \$1.10 in no-fault premiums would produce 83 cents in benefits. Even in rural States, no-fault is more cost-effective than the tort system alternative.

Additionally, nothing in S. 354 changes the current practice of rating by actuarial territories. Thus, the charge sometimes raised that under no-fault rural drivers will be subsidizing urban drivers is patently false. Each area would be rated separately.

10. S. 354 represents a shared State/Federal responsibility for auto insurance.

S. 354 represents an interesting approach to shared State/Federal responsibility, in which the States are charged with implementing and augmenting minimum Federal standards for auto insurance. The legislation affords the States considerable latitude in constructing an automobile insurance scheme which meets the minimum Federal standards but is also tailored to the particular needs of that State's motoring public.

In several areas such as Fair Housing, to name but one at HUD, statutory provision is made for a State with equivalent laws and enforcement resources to take over the enforcement of a Federal law. The scheme of S. 354 differs from such mechanisms only in that the State is required rather than allowed to implement the federally mandated scheme. While the Supremacy Clause would require a State to abide by Federal standards such as those in S. 354 in its regulation of insurance, arguably, S. 354 goes somewhat further by requiring the State to regulate automobile insurance in accord with its terms.

11. HUD proposes to amend S. 354 to provide a sanction for noncompliance with the minimum Federal standards.

The amendments to S. 354, which HUD has suggested, obviate the Tenth Amendment issue. We have proposed that S. 354's minimum standards be retained, but that any State which failed to comply with those minimum standards be ineligible for highway trust funds or related Federal transportation aid until it came into compliance. This scheme would put the Federal Government into the position of encouraging the States to adopt a Federal regulatory model, a more traditional configuration.

12. Conclusions.

Since the current no-fault legislation was held up by the former Administration, the Administration could claim substantial credit for a Federal no-fault bill should it quickly support that measure. The Administration could also seize the initiative on no-fault by proposing amendment to S. 354 which would remove Title III in favor of a suspension of Federal transportation aid as a sanction for noncompliance with the minimum Federal standards.

The claim that no-fault could be a windfall for commercial fleet owners is resolved by a specific provision of S. 354 (at Section 111(a)(3)).

Finally, it is argued that no-fault could impact adversely on some small insurers. Group merchandising does become more feasible under a no-fault plan. Group merchandising is also a more efficient insurance underwriting and marketing technique, hence, is apt to produce significant savings for the consumer. To the extent small insurers suffer, it is because of their incapacity to compete in the market place and provide consumers with the best service at the lowest price. The protection of inefficient commercial operations is not a proper consideration in determining the Administration's stance on no-fault legislation.

7. The fault system neither deters nor punishes the negligent driver.

The DOT study of automobile insurance also demonstrated that the existing tort system neither deters nor punishes the negligent driver. Negligent drivers are defended by their liability insurers, and judgments rendered against them are paid by their insurance companies. Moreover, most tort cases are resolved in out-of-court settlements by the insurer, avoiding any legal determination of culpability. The real loser in the current system is the prudent insured carrying high limit liability insurance, who is struck by a negligent uninsured motorist, and is uncompensated. In a no-fault scheme, this anomaly is avoided.

8. The need for interstate uniformity.

There is a need for minimum Federal standards to achieve a degree of interstate uniformity. Currently, more than 5 million drivers in assigned risk pools and a similar number holding policies from substandard writers cannot acquire coverage that increases to anything in excess of the limits of liability stated in their own policy. Their underwriters do not offer limits in excess of their particular State's statutory minimum. So when these drivers wander into higher limit States, they are driving, in effect, in violation of the host State's Financial Responsibility Laws. The result is a game of Russian roulette for the victim; the extent to which he is compensated for his loss may depend on the home state of the driver who causes the injury.

9. Congress has the authority to enact no-fault legislation.

The States' power to regulate insurance is a creature of Congressional statute. Congress, pursuant to the Commerce Clause, has retained the ultimate authority to legislate on insurance matters. Congress could mandate a totally Federal automobile insurance scheme. Instead, S. 354 seeks to establish a system of minimum Federal guidelines to be augmented and implemented by the States.



U.S. DEPARTMENT OF TRANSPORTATION  
NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION  
WASHINGTON, D.C. 20590

THE ADMINISTRATOR

July 6, 1977

Ms. Mary Schuman  
Domestic Council  
Room 227  
Old Executive Office Building  
Washington, D. C. 20500

Dear Mary:

In reference to your call about the relationship between motor vehicle safety and no-fault insurance, the most important point is that an insurance company can set its rates in a no-fault State based on the safety characteristics of a person's car. Without no fault the insurance company must insure against any car that might be involved in a crash with the insured. With no fault an auto company which invested some additional resources in improving vehicle crash survivability, for example, and concomitantly charges the vehicle buyer a slightly higher retail price, could sell the vehicle competitively on the basis that the improved crash survivability would serve to lower the yearly insurance charges to the vehicle owner.

Thus, no fault and the recent decision by Secretary Adams to require passive restraints will add approximately \$112 to the cost of a new vehicle, but that insurance savings would range from \$16 to \$30 per year over the life of the car for the built-in safety -- more than enough to recover the cost of the initial purchase.

Although it is true that for small improvements in vehicle safety there is probably little if any payoff from no fault, it does have a significant payoff for important vehicle safety improvements and of course it is the big ones which are controversial and where the balancing of costs becomes an important sales pitch for public acceptance.

Sincerely,

Joan Claybrook

UNITED STATES GOVERNMENT

# Memorandum

TO : Mary Schuman  
Domestic Policy Staff  
Room 227, Old Executive Office Building

FROM : Patricia Wald *PMW*  
Assistant Attorney General  
Office of Legislative Affairs, Justice Department

SUBJECT: No-Fault Automobile Insurance

DATE: July 5, 1977

The Department of Justice has reviewed the constitutionality of the four proposed no-fault automobile insurance bills and examined the policy implications of the "Standards for No-Fault Motor Vehicle Accident Benefits Act" (S. 1381 and H.R. 6601).

## Constitutional Issues

As a matter of constitutional law, Congress appears to have the authority under the Commerce Clause both to regulate automobile insurance and the system for compensating victims. The provisions of S. 1381, H.R. 6601 and H.R. 1597 are plainly within the powers of Congress. The fourth no-fault bill, H.R. 5149, would appear to risk a substantial challenge on constitutional grounds because provisions of the bill might result in direct federal interference with the internal organization and financial independence of the states. However, it appears that this bill will not be given serious consideration by either house of Congress. Attached is a memorandum which more fully details the constitutional issues in the proposed legislation. 1/

## Policy Issues

If enacted, the federal no-fault standards (S. 1381 and H.R. 6601) will significantly reduce the number of motor vehicle personal injury suits in state and federal courts. The no-fault standards also appear beneficial to accident victims, but these are issues which the Department of Transportation can more adequately address.

The data from a number of states show that no-fault, even in states with low tort thresholds, has had a significant impact on the civil caseload of state and local courts:

1/ The Civil Division is currently reviewing the bills and may propose technical changes in them.



5010-110

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- Massachusetts, the first state to pass a no-fault law, experienced a reduction of over 46,000 cases in its courts between 1970, the last year of the tort law, and 1975. In 1970, motor vehicle cases comprised 35 percent of the cases in the state's lower courts and 66 percent of the cases in its higher courts. In 1975, they comprised 6 percent and 25 percent respectively.
- New Jersey, which has a very low tort threshold, had almost 11,000 fewer automobile negligence complaints filed in its lower courts between 1972, the last year of the tort law, and 1976. In 1972, automobile complaints were 9.4 percent of all civil complaints in the state's lower courts; in 1976, they were 4.0 percent.
- Michigan, which has the tightest restrictions on tort suits, has had a reduction of over 3,000 cases, 30 percent of all automobile negligence suits, in its higher court (claims over \$10,000) during the first two years of no-fault. The Michigan insurance commissioner has stated that there also has been a "very sharp decrease" in the number of automobile personal injury suits in Michigan's lower courts, although reliable data are not yet available.
- The Colorado insurance commissioner estimates that that state has experienced a 27 percent reduction in the number of automobile personal injury suits since 1974 when the no-fault law took effect.

[ Other no-fault states confirm that there has been a reduction in the civil caseload of the courts since the enactment of no-fault laws. Moreover, the enactment of federal no-fault standards would further reduce the civil caseload in most states that now have no-fault laws because the tort threshold under the federal standards is higher than most states currently have. The states that still have tort laws will also experience a sharp decrease in the number of automobile personal injury suits.

The federal system will also benefit from federal no-fault standards. Under the proposed legislation, no motor vehicle personal injury suits can be filed in Federal district courts unless the Federal government is a party to such suits. In 1976, there were over 6,400 private party diversity suits which would have been eliminated from the federal courts under S. 1381 and H.R. 6601. This was 4.5 percent of all the civil suits pending in federal district courts. Furthermore, the Federal government will benefit from reduced litigation and administrative costs that currently arise under the Federal Tort Claims Act since it, too, must provide coverage like any other motor vehicle owner. These savings could amount to millions of dollars every year.

Attachment

UNITED STATES GOVERNMENT

DEPARTMENT OF JUSTICE

# Memorandum

TO : Patricia M. Wald  
Assistant Attorney General  
Office of Legislative Affairs

DATE: 29 JUN 1977

FROM : John Harmon  
Assistant Attorney General  
Office of Legal Counsel

SUBJECT: Constitutional Issues in Proposed  
Federal No-Fault Legislation

In response to the oral request of your office, this memorandum discusses the constitutionality of four bills which would implement a Federal system of no-fault automobile insurance and provide for implementation by the States as an alternative. 1/ The memorandum also summarizes the comments of the Department on the constitutionality of previous proposals for federal no-fault insurance.

## I. Background

The first proposals for federal no-fault insurance on which the Department commented were introduced in the 92nd Congress. 2/ They took the form of a federally administered system which would abrogate inconsistent State laws on tort liability and automobile insurance. The Department took the position that Congress had the power under the Commerce and Supremacy Clauses (Art. I, § 8, cl. 3 and Art. VI, § 2) to regulate the business of automobile insurance, to provide a system of compensation for accidents on the national highway system, and to override contrary State law. 3/

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1/ S. 1381, H.R. 1597, H.R. 5149, H.R. 6601.

2/ H.R. 4994, H.R. 7514, H.R. 10222, and H.R. 10808.

3/ Letter of January 3, 1972 from Deputy Attorney General Kleindienst to Congressman Staggers, Chairman of the House Interstate and Foreign Commerce Committee. (Attachment A.)

S. 354, introduced in the 93d Congress by Senator Magnuson, took a different approach. The bill provided a set of minimum standards for state no-fault plans. In any State not enacting a conforming plan within the time allowed, the alternative Federal plan provided by the bill would become the law of the State, to be enforced by State officers with State funds. There would be no Federal role in the enforcement of the plan. In a letter to the Chairman of the Senate Judiciary Committee, the Office of Legal Counsel expressed serious doubts about the constitutionality of this method. 4/ Those views can be summarized as follows:

a. Congress could constitutionally establish an entire federal system of no-fault insurance which could abrogate inconsistent state law.

b. Congress could use the prospect of a federal system as an inducement to obtain the enactment of state laws which met federal standards.

c. Congress could not, consistently with the principles of federalism, interfere with state sovereignty by conferring new duties on state executive officers, requiring the States to establish new agencies, and requiring the expenditure of state funds.

In testimony before the Senate Commerce Committee, Attorney General Levi reiterated these views. 5/ He stated that the recent decision of the Supreme Court in Fry v. United States 6/ had raised a substantial question as to the limits placed by the Tenth Amendment on the Federal Government's power under the Commerce Clause to regulate the internal affairs of the State governments. He also told the committee that the then pending case of National League of Cities v. Brennan 7/ might be of importance on the issue.

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4/ Letter dated April 19, 1974 from Assistant Attorney General Dixon to Senator Eastland. (Attachment B.)

5/ Testimony of Attorney General Levi, before the Committee on Commerce, United States Senate, concerning S. 354, June 5, 1975. (Attachment C.)

6/ 421 U.S. 542 (1975).

7/ Decided sub nom. National League of Cities v. Usery, 426 U.S. 833 (1976).

In a follow-up letter to the Committee, the Attorney General proposed an amendment to the bill which would remove the constitutional difficulties by giving the States an alternative of federal or state administration of the federal no-fault plan. 8/

## II. Summary of the Bills

It appears that the purpose of the bills is to provide quick and virtually certain payment of losses to almost all victims of automobile accidents. In effect, this means the substitution of what the insurance industry refers to as first-party coverage (indemnity) for third-party coverage (liability).

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8/ Letter dated June 10, 1975 from Attorney General Levi to Senator Magnuson (Attachment D). The text of the Levi Amendment is as follows:

(g) State Option. -- The alternative Federal no-fault plan for motor vehicle insurance that is applicable or in effect in a State shall be implemented, administered, operated, and maintained exclusively by the Secretary [of Transportation], unless the chief executive officer of the State certifies that the State has enacted legislation authorizing the assumption of these functions. Upon such certification the State shall implement, administer, operate, and maintain the alternative State no-fault plan. However, if a State repeals the legislation assuming these functions, then the Secretary, upon notice in writing, shall perform these functions. The Secretary is authorized to promulgate regulations providing for the orderly transfer from a State to the Secretary or from the Secretary to a State of the functions involved in implementing, administering, operating, and maintaining an alternative State no-fault plan when such a transfer is required under this Section. There are authorized to be appropriated to the Secretary such sums as are necessary to carry out any duties imposed on him under this subsection.

The bills would accomplish this result in two different ways. S. 1381 <sup>9/</sup> establishes minimum national standards of insurance coverage, rehabilitation services, and claims procedure for personal injuries or deaths incurred in automobile accidents. A State may enact and administer its own no-fault plan which meets the federal standards. If any State fails to establish a conforming no-fault plan within a limited time, an alternative federal plan would go into effect within that State. As originally proposed in the Levi Amendment, the alternative plan would be administered by the Secretary of Transportation unless the Governor of the State certified that the State had enacted the necessary legislation and was willing to administer the federal plan.

H.R. 5149 is a copy of the original S. 354. It also established federal standards and allows the States to adopt conforming legislation. However, in the event that any State does not adopt a no-fault plan, Section 301 of the bill provides that the alternative federal plan "goes into effect" within that State.

The plan is to be administered by a state official, the "Commissioner." The Commissioner is required to establish an assigned risk plan. Section 105(a). To implement that plan, he is authorized to make rules and orders, enter contracts, and "form and operate or authorize the formation and operation of bureaus and other legal entities." Section 105(a)(5). The Commissioner is required to set rates and to evaluate the medical and rehabilitation services for which claims are made. Section 109(a), (c). He is authorized to take all necessary steps to assure the availability of medical and rehabilitation services, including "guarantees of loans or other obligations of suppliers or other providers of such services." Section 109(d). H.R. 5149 does not provide for any federal implementation, administration, or financing of the alternative plan.

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<sup>9/</sup> S. 1381 is identical to H.R. 1597 and H.R. 6601 in the features which are of concern to this memorandum. Reference to the Senate bill therefore includes these two House bills.

### III. Discussion

#### A. S. 1381

As a matter of constitutional law, it would appear that the Commerce Clause authorizes Congress both to regulate the business of automobile insurance and to provide a federally-directed system of compensation for automobile injuries. See United States v. Southeastern Underwriters Association, 322 U.S. 533 (1944); United States v. Darby, 312 U.S. 100 (1941); cf. Second Employers' Liability Cases, 223 U.S. 1 (1912). Any contrary state law may, of course, be abrogated under the Supremacy Clause. Second Employers' Liability Cases, *supra*. There is no constitutional restriction on the prospective abolition of common law tort liabilities for a national purpose in an area which Congress may regulate. See Silver v. Silver, 280 U.S. 117 (1929); Second Employers' Liability Cases, *supra*; Carr v. United States, 422 F.2d 1007 (C.A. 4, 1970). But cf. Sidle v. Majors, 536 F.2d 1156, 1158 (C.A. 7, 1976). It is also clear that if Congress may itself enact a no-fault system, it may use that power to induce the States to provide their own as an alternative to a federally administered system. Steward Machine Co. v. Davis, 301 U.S. 548 (1936). S. 1381 provides a system of no-fault insurance and compensation, with the choice left to the States to administer the Federal plan, enact their own equivalent plans, or leave the matter to the Federal government. <sup>10/</sup> The bill is plainly within the powers of Congress.

#### B. H.R. 5149

As stated above, H.R. 5149 would require any State which did not enact its own plan to administer the Federal no-fault system. The bill would impose new duties on the State official responsible for the regulation of insurance, and it would authorize him to establish new legal entities and to commit the

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<sup>10/</sup> The correctness of the Governor's certification that state law was adequate to implement the plan is a matter of state law and does not present any federal question.

State's credit to underwriting private obligations. Attorney General Levi took the position in commenting on the bill's predecessor that Congress lacked the power under the Commerce Clause to interfere with the organization and powers of a state government. Developments in the law since 1975 furnish increased support to that view.

The leading case is National League of Cities v. Usery, 426 U.S. 833 (1976). There, the Court held that the Commerce Clause did not give Congress the power to regulate wages and hours of state and local government employees. The Tenth Amendment 11/ and the principles of federalism, reasoned the Court, prohibit the national government from regulating under the Commerce Clause the sovereign activity of the States as such. Id. at 842-45. Regulation of wages and hours, it concluded, interfered with the relationship of a state to its employees, an aspect of sovereignty. Id. at 851-52. Regulation also placed on the states fiscal burdens which both directly interfered with their control of public expenditures and indirectly controlled the type and amount of public services they provided. Id. at 845-51. Finally, the Court overruled Maryland v. Wirtz, 12/ which had held that Congress could regulate the wages and hours of employees in public schools and hospitals, and which had stated broadly that the States occupied the same position as individuals vis a vis the Commerce Power. 13/ It concluded that "Congress may

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11/ "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States, respectively, or to the people."

12/ See 426 U.S. at 853-54.

13/ See Maryland v. Wirtz, 392 U.S. 183, 198 (1968).

not exercise [the commerce] power so as to force directly upon the States its choices as to how essential designs regarding government functions are to be made." Id. at 853-54. 14/

Much of the language of Usery is dictum, and its application to the regulation of economic activities by the States as activity which affects commerce may be uncertain. Nevertheless, it appears to preclude direct interference under the Commerce Clause with what are inherently aspects of state governmental activity. This would certainly include the powers and duties of state executive officers, the creation of new state agencies, and the commitment of state credit to guarantee private debts. 15/ While we lack the facts to say so definitively, it is not improbable that the imposition of the federal plan on a non-confirming State would also cause substantial financial burdens. We therefore believe that after Usery it is extremely unlikely that Congress may, under the

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14/ The Court also distinguished and limited Fry v. United States, 421 U.S. 533 (1975), which had upheld Congress' power under the Commerce Clause to apply the wage freeze in the Economic Stabilization Act to state salaries. Fry, the Court stated, had involved an emergency statute, effective for a limited time, which did not directly affect the structure of state governments, and did not indirectly do so by increasing their financial burdens. National League of Cities v. Usery, 426 U.S. at 852-53. None of these considerations are present in H.R. 5149, and Fry therefore provides no support for its constitutionality.

15/ It should be noted that many state constitutions forbid the pledging of the public credit to private debts. E.g., Alabama, Art. IV, §§ 693-94; Arizona, Art. 9 § 7; Colorado, Art. 4, § 1; Delaware, Art. VIII, § 4; Florida, Art. IX, § 10; Georgia, Art. VII, § 3; Indiana, Art. X, § 6; Louisiana, Art. VII, § 14; Maryland, Art. 3, § 34; New Jersey, Art. VIII, § 2; North Carolina, Art. V, § 3; Ohio, Art. VIII, § 4; Texas, Art. III, § 50; Virginia, Art. 10, § 10; Washington, Art. VIII, § 5. While these provisions are, of course, subject to the Supremacy Clause, they demonstrate that the use to which public credit may be devoted is a fundamental question of a government's organization and powers.

Commerce Clause, interfere with the internal organization and financial independence of the States in the manner proposed by H.R. 5149. 16/

In the 1975 hearings, Attorney General Levi noted that the Clean Air Act was interpreted by the Environmental Protection Agency (EPA) to require States without their own pollution control regulations to establish enforcement programs for the alternative federal anti-pollution regulations. 17/ He also noted that one Court of Appeals had rejected the argument that EPA could not constitutionally interfere with a State's sovereignty by requiring it to enforce federal regulations. 18/ The history of subsequent litigation on this point lends support to our conclusion on the constitutional question.

Purporting to act under Section 113 of the Clean Air Act and its own regulations, 19/ EPA promulgated air pollution control plans which would have required the States of California, Maryland, and Virginia, to establish at their own expense automobile

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16/ The Usery opinion does not, of course, apply to interference with the internal affairs of state governments in the course of legislative or judicial enforcement of the Fourteenth Amendment, as that Amendment is itself an express constitutional limitation on state sovereignty. Thus, cases relating to reapportionment, to discrimination in public employment, or to discrimination in public education are not relevant to Congress' authority under the Commerce Clause, which is only a general grant of legislative power.

17/ Attachment C at pp. 7-9.

18/ See Pennsylvania v. EPA, 500 F.2d.246 (C.A. 3, 1974). The Third Circuit based its conclusion primarily on Maryland v. Wirtz, which has since been overruled. Id. at 259-63; see National League of Cities v. Usery, 426 U.S. 833 (1975).

19/ 42 U.S.C. § 1857c-8; 40 CFR § 52.23 (1974).

inspection services to enforce the plan's requirement that private vehicles be fitted with emission control equipment. EPA also stated that it would seek injunctive relief against any State which did not establish and finance the inspection service. The Courts of Appeals for the District of Columbia, and the Fourth and Ninth Circuits reviewed the plans and held that the Clean Air Act did not authorize EPA to compel affirmative enforcement by a State of federal regulations governing private pollution sources. 20/ Each court stated that it reached its conclusion on the question of statutory authority in order to avoid reaching the constitutional issue of federal power to compel state enforcement under the Commerce Clause, and each court stated in dictum that it believed that the commerce power would not extend that far. 21/ The Supreme Court granted certiorari, but it vacated the judgments and remanded the cases after EPA withdrew the underlying regulations. 22/

Thus, with the exception of the Third Circuit, every Court of Appeals that considered the point before Usery believed that it would be an unconstitutional infringement of state sovereignty for the Federal Government to compel a State to establish and finance an agency for the enforcement of a federal law. The contrary decision of the Third Circuit is, we think, vitiated by the overruling of the principal authority on which it rested. While the withdrawal of the regulations does not necessarily indicate acquiescence by the United States in these dicta, it does suggest an unwillingness to contest the issue. 23/

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20/ Maryland v. EPA, 530 F.2d 215, 226-28 (C.A. 4, 1975); Brown v. EPA, 521 F.2d 827, 832-37 (C.A. 9, 1975); District of Columbia v. Train, 521 F.2d 971, 981-91 (C.A. D.C. 1975).

21/ Maryland v. EPA, 530 F.2d 215, 223-26 (C.A. 4, 1975); Brown v. EPA, 521 F.2d 827, 836-42 (C.A. 9, 1975); District of Columbia v. Train, 521 F.2d 971, 990-95 (C.A. D.C. 1975).

22/ 45 USLW 4445 (May 2, 1977).

23/ In its brief to the Supreme Court, the United States attempted to distinguish Usery by arguing that the financial impact of the EPA regulations was minimal and that Usery did not prohibit requirements of affirmative action which did not have substantial financial impact. EPA v. Brown, Brief for the United States, pp. 45-56.

We do not believe that Testa v. Katt, 330 U.S. (1947), supports the approach of H.R. 5149. In that case, the Court held that Rhode Island could not, under the Supremacy Clause, refuse to hear cases under a federal statute in its courts of general jurisdiction. The opinion makes it plain that "the Rhode Island courts have jurisdiction adequate and appropriate under established local law" to adjudicate the type of case in question. 330 U.S. at 394. It also noted that state courts had been deciding federal question cases since the establishment of the Constitution, Id. at 389-91. 24/ What was determined in Testa was that existing state courts with adequate authority could not be closed to claims based on federal law. Id. at 392-94. See also Second Employers' Liability Cases, 223 U.S. 1, 56-59 (1912). In the light of the historical difference between executive and judicial action, and in the light of Usery, it is doubtful that the decision can be read to authorize the action contemplated by H.R. 5149.

In conclusion, if it is considered desirable to enact federal no-fault legislation in which the burden of administration will largely rest on the States, we believe that the approach relied on in S. 1381 is the preferable one, for it is within the settled powers of Congress under the Commerce Clause. The method used in H.R. 5149, on the other hand, risks a substantial challenge on constitutional grounds either by persons affected by the no-fault plan or by the officials of a State government which is unwilling to undertake the burden of administering the federal no-fault system.

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24/ This is not true of state executive officers, for there has never been a practice of requiring them to enforce federal laws. See Hart, The Relations Between State and Federal Law, 54 Columbia L. Rev. 489, 515-16 (1954). The provisions of the Constitution which apparently compel state officers to surrender fugitives have long been interpreted to create no enforceable duty on the part of state executive officers. U.S. Constitution Art. IV, § 2, cl. 2-3; Kentucky v. Denison, 65 U.S. 66 (1861); Prigg v. Pennsylvania, 41 U.S. 539 (1842).

THE PRESIDENT HAS SEEN.

2 30 PM

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THE WHITE HOUSE

WASHINGTON

July 13, 1977

MEETING WITH REP. SHIRLEY CHISHOLM (D-NY)

Thursday, July 14, 1977

2:30 p.m. (15 minutes)

The Oval Office

From: Frank Moore *FM*.

I. PURPOSE

To discuss human rights and human resources with Mrs. Chisholm.

II. BACKGROUND, PARTICIPANTS & PRESS PLAN

Background: Mrs. Chisholm is very supportive of the President, but she is concerned about the image he is projecting to the American people. She feels that the President is not as concerned about human resource programs as he is about energy and defense issues. She says "the natives are getting very, very restless." She does not see, nor do her constituents, his concern for the day-to-day problems. She feels strongly that human resources and human rights are linked closely together and have to be dealt with together. She has strongly indicated that there is equal concern among both blacks and whites for what she perceives as the President's lack of action. Mrs. Chisholm was first elected in 1968 and received 87% of the vote in 1976. She is #10 on the Rules Committee. She represents south central Brooklyn, which is 61% foreign stock, 64% white collar, and 28% blue collar.

Participants: The President, Mrs. Chisholm, Frank Moore, Valerie Pinson.

Press Plan: White House photographer only.

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800 AM

THE PRESIDENT HAS SEEN.

THE WHITE HOUSE

WASHINGTON

9

July 13, 1977

BREAKFAST WITH SENATORS

Thursday, July 14, 1977

8:00 a.m. (60 minutes)

Roosevelt Room

From: Frank Moore *F.M.*

I. PURPOSE

To meet with both Democratic and Republican Senators.

II. BACKGROUND, PARTICIPANTS & PRESS PLAN

A. Background: This is the fourth in a series of breakfast meetings with Senators. As before, the group represents a cross section of the Senate--a member of the leadership; junior and senior Senators; committee chairmen. It appears that, with the exception of Senator Johnston, this group will be mostly liberal.

B. Participants: The President; Vice President; Senators Quentin Burdick, Dick Clark, Dennis DeConcini, John Glenn, Gary Hart, Hubert Humphrey, Bennett Johnston, Warren Magnuson, Spark Matsunaga, Dick Stone; Frank Moore, Dan Tate, Bob Thomson, Bill Smith.

C. Press Plan: White House Photo

III. TALKING POINTS

A. As before, no agenda was prepared in order to allow for candid, open-ended conversation between you and the Senators.

B. Attached are biographical sketches on the Senators who will be attending this breakfast. We have also indicated, where appropriate, some comments which might come up during discussions.

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QUENTIN N. BURDICK (D-North Dakota); 4th term (1982); born June 19, 1908, Munich, North Dakota; Congregationalist; married (Jocelyn); B.A., LL.B., University of Minnesota; practiced law, 1932-58; U.S. House of Representatives, 1959-60; elected to U.S. Senate, 1960.

Chairman, Subcommittee on Regional and Community Development (Committee on Environment and Public Works).

Senator Burdick is concerned with wheat prices. He also does not understand why three top Republicans in North Dakota have been named to the Administration.

DICK CLARK (D-Iowa); 1st term (1978); born September 14, 1929, Paris, Iowa; married (Jean); two children; U.S. Army, 1950-52; National Oratorical and Debate Champion, 1953; M.A., University of Iowa, 1956; teacher, 1956-64; Chairman, Iowa Office of Emergency Planning, 1963-65; Chairman, Iowa Civil Defense Administration, 1963-65; Administrative Assistant to Rep. John Culver, 1965-72; elected to U.S. Senate, 1972.

Chairman, Subcommittee on Rural Development (Committee on Agriculture, Nutrition and Forestry); Chairman, Subcommittee on African Affairs (Committee on Foreign Relations).

DENNIS DeCONCINI (D-Arizona); 1st term (1982); born May 8, 1937, Tucson, Arizona; Catholic; married (Susan); three children; U.S. Army, 1959-60; LL.B., University of Arizona, 1963; Special Council to Arizona Governor, 1965; administrator, Arizona Drug Control District, 1975; elected to U.S. Senate, 1976.

Chairman, Subcommittee on Improvements in Judicial Machinery (Committee on the Judiciary).

JOHN GLENN (D-Ohio); 1st term, 1980; born July 18, 1921, Cambridge, Ohio; Presbyterian; married (Annie); two children; U.S. Marine Corps, 1942-65; first American to orbit the Earth, 1962 (Friendship 7); President, Royal Crown International, 1967-69; elected to U.S. Senate, 1974.

Chairman, Subcommittee on East Asian and Pacific Affairs (Committee on Foreign Relations); Chairman, Subcommittee on Energy, Nuclear Proliferation and Federal Services (Committee on Governmental Affairs).

Senator Glenn may mention something about the problems with the Postal Service. As you are well aware, he is also deeply interested in Portsmouth.

GARY HART (D-Colorado); 1st term (1980); born November 28, 1937, Ottawa, Kansas; married (Lee); two children; Yale Divinity School; LL.B. Yale University Law School, 1964; U.S. Department of Justice; special assistant to Secretary Stewart Udall, Department of Interior; national campaign director for George McGovern, 1972; authored, Right from the Start; elected to U.S. Senate, 1974.

Chairman, Subcommittee on Military Construction and Stockpiles (Committee on Armed Services); Chairman, Subcommittee on Nuclear Regulation (Committee on Environment and Public Works).

Senator Hart is most concerned with the possible transfer of CEQ from the EOP. He is also upset with the delay in appointing minorities to various regional positions. The Senator has been a good friend on many votes (clean air, strip mining, etc.). His subcommittee will handle the confirmation process on our NRC appointments and, while he has made no final decision, he is inclined against Hendrie as Chairman.

HUBERT HUMPHREY (D-Minnesota); 3rd term (1982); born May 27, 1911, Wallace, South Dakota; Congregationalist; married (Muriel); four children; A.B., Phi Beta Kappa, University of Minnesota; M.A., Louisiana State University; Assistant Director, War Manpower Commission, 1943; Mayor of Minneapolis, 1945-49; elected to U.S. Senate, 1948, served until 1964; Vice President of the United States, 1965-69; Professor, University of Minnesota, 1969-70; elected to U.S. Senate, 1970.

Chairman, Subcommittee on Foreign Agricultural Policy (Committee on Agriculture, Nutrition and Forestry); Chairman, Subcommittee on Foreign Assistance (Committee on Foreign Relations); Chairman, Joint Economic Committee; Chairman, Subcommittee on Economic Growth and Stabilization (Joint Economic Committee).

J. BENNETT JOHNSTON, JR. (D-Louisiana); 1st term (1978); born June 10, 1932, Shreveport, Louisiana; Baptist; married (Mary); four children; LL.B., Louisiana State University Law School, 1956; U.S. Army, 1956-59; State house of representatives, 1964-68; State senate, 1968-72; elected to U.S. Senate, 1972.

Chairman, Subcommittee on Military Construction (Committee on Appropriations); Chairman, Subcommittee on Energy Conservation and Regulation (Committee on Energy and Natural Resources).

The Senator is concerned with the Outer Continental Shelf and wants to adopt a revenue sharing method of disbursing OCS funds.

WARREN G. MAGNUSON (D-Washington); 6th term (1980); born April 12, 1905, Moorhead, Minnesota; Lutheran; married (Jermaine); LL.B., University of Washington, 1929; special prosecutor, King County, 1931; Washington State Legislature, 1933-34; assistant U.S. district attorney; prosecuting attorney; King County, 1934-36; U.S. Navy, WW II; elected to U.S. Senate, 1944.

Chairman, Subcommittee on Labor, Health, Education and Welfare (Committee on Appropriations); Chairman, Committee on Commerce, Science and Transportation.

Senator Magnuson may urge speedy action on the appointment of the Judge in the Western District of Washington.

SPARK MATSUNAGA (D-Hawaii); 1st term (1982); born October 8, 1916, Kukuia, Kauai, Hawaii; married (Helene); five children; U.S. Army, 1941-45; U.S. Department of Interior, 1945-47; J.D., Harvard Law School, 1951; Hawaii Territorial Legislature, 1954-59; house majority leader, 1959; member, Hawaii Statehood Delegation to Congress, 1950, 1954; U.S. House of Representatives, 1963-76; elected to U.S. Senate, 1976.

Any payment limitation under the sugar program hurts Hawaii since most of that State's sugar is produced by large enterprises.

RICHARD B. STONE (D-Florida); 1st term (1980); born September 22, 1928, New York City; Jewish; married (Marlene); three children; B.A., cum laude, Harvard University, 1949; LL.B., Columbia University Law School, 1954; Florida Senate, 1967-70; Florida Secretary of State, 1970-74; elected to U.S. Senate, 1974.

Chairman, Subcommittee on Near Eastern and South Asian Affairs (Committee on Foreign Relations); Chairman, Subcommittee on Housing, Insurance and Cemeteries (Committee on Veterans' Affairs).

Senator Stone is most concerned with the Israeli situation.

THE WHITE HOUSE  
WASHINGTON

*Canand  
+ notes down  
to AMB*

Date: July 14, 1977

MEMORANDUM

**FOR ACTION:**

The Vice President  
Stu Eizenstat  
Hamilton Jordan  
Frank Moore  
Jack Watson

**FOR INFORMATION:**

Zbig Brzezinski  
Bob Strauss

**FROM:** Rick Hutcheson, Staff Secretary

**SUBJECT:** Bert Lance's memorandum dated 7/14/77 re Farm Bill.

*decisions at  
mtg*

**YOUR RESPONSE MUST BE DELIVERED  
TO THE STAFF SECRETARY BY:**

**TIME:** 12:00 NOON

**DAY:** Saturday

**DATE:** July 16, 1977

**ACTION REQUESTED:**

☒ **Your comments**

**Other:**

**STAFF RESPONSE:**

☐ **I concur.**

☐ **No comment.**

*Please note other comments below:*

*not submitted  
per Bob Cutler*  
*[Signature]*

**PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.**

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately. (Telephone, 7052)

3:15 PM  
THE PRESIDENT HAS SEEN.

THE WHITE HOUSE

WASHINGTON

July 13, 1977

MEMORANDUM FOR THE PRESIDENT

FROM: Jack Watson *Jack*  
SUBJECT: Meeting to Discuss FRC Proposals  
Thursday, July 14, 1977 3:15 p.m.

Attached is a package of material which you have already reviewed. It includes all of the staff's reactions to the FRC reform proposals. As you know, the major pending decision is whether or not to have a full-time "Presidential" (rather than part-time "Departmental") representative to act as Chairperson of a restructured Regional Coordinating Committee reporting to the Under Secretaries Group.

One additional item: In looking through the General Government section of the "Promises, Promises" book prepared by Stu and David last November, I came upon the following entry.

"d. State/Local Relations

- (1) Upgrading the role of regional councils representing the federal government to assist state and local officials, as well as private citizens, in dealing with federal agencies; empowering the councils to review conflicts among the various federal agencies and allowing them quick access to the highest levels of the federal government. (National Governors' Conference Remarks, 7/6/76)."

Attachment

Electrostatic Copy Made  
for Preservation Purposes

THE WHITE HOUSE  
WASHINGTON  
THE PRESIDENT HAS SEEN.

C

ACTION

25 June 1977

TO: THE PRESIDENT  
FROM: RICK HUTCHESON *R.H.*  
SUBJECT: SUMMARY of Watson Memo, "Federal  
Regional Council Reform," and of  
Comments by Eizenstat and Lance/  
McIntyre

I. Watson's May 20 Recommendations on FRC Reform. See Tab A.

II. Reaction of Governors to FRC reform proposals.

Jack reports that his office had direct contact with 47 Governors. They were virtually unanimous in expressing dissatisfaction with the current FRCs, and in the view that there must be a more effective coordinating capability in the field. All the Governors with whom Jack's office spoke were enthusiastically in favor of a full-time presidential chairperson and for revised FRC membership, according to Jack.

III. Reaction of the Cabinet to FRC reform proposals.

Jack says that HUD, HEW, DoL, EPA, and Commerce all strongly support the reforms, and that GSA, Agriculture and VA also support the proposed changes. Commerce endorsed the recommendations while emphasizing the need to look at overall Title V Commission questions once the FRC question is settled.

DOT, Interior and CSA are doubtful that a change in FRC structure by itself will solve the problem in the absence of clear direction and support from the President and Cabinet (Jack agrees). DOT and Interior also question the elimination of the Federal Executive Boards.

There is a strong preference among both the departments and state/local officials for housing the presidential representatives in the EOP, with a clear reporting relationship to the President, according to Jack.

IV. Criticisms of the FRC reform proposals.

Jack observes that there is unanimous agreement among Lance, McIntyre, Eizenstat, Moore and Watson on the need for reform,

and that the FRC proposal should be integrated with the EOP reorganization. Frank points out that the best vehicle for passing FRC reforms would be through submission as part of the reorganization plan. However, Lance, McIntyre and Eizenstat have expressed several reservations about the proposed reforms, to which Jack has responded.

A. the "Court of Appeals" problem

Lance, McIntyre and Eizenstat have expressed management and political concerns that the proposal would overload the White House with complaints and appeals from unhappy public officials and private citizens, that the White House would become a "court of appeals" for governors and mayors for hundreds of specific problems with federal programs.

Jack observes that the problems would not come directly to the President's IGR Assistant/Cabinet Secretary, but instead would go to the Under Secretaries Group (USG), which is co-chaired by Watson and McIntyre.

Jack also points out that:

1. he and his staff already handle "ombudsman" problems, as does OMB;

2. he is working to strengthen the intergovernmental capability of departments, and is referring as many problems to them as possible;

3. a full-time chairperson would be a useful contact point on lesser issues, and might keep many matters away from Washington;

4. smaller cities/counties do not often appeal to the White House now; governors and big-city mayors frequently do -- and the proposed reforms are unlikely to change this;

5. it is a plus that some problems not now coming to White House attention would reach it under the plan; the White House should know about cross-cutting, interagency management problems;

6. the presidential representative would attempt to solve as many problems as possible in the field; single agency problems would be referred to that agency; the presidential representative would deal only with inter-agency problems.

B. competition between the White House and the "constituency service" role of Members of Congress

Eizenstat, Lance and McIntyre express concern that the FRC chairpersons might be seen by congressmen as competing with the constituency service role of Congress - bypassing congressional case work.

Jack responds that the FRC chairpersons would deal only with interagency/intergovernmental matters, not just any constituency problem. Jack says his proposal would address directly a common congressional complaint about lack of program coordination in the field.

C. adding more staff to the EOP conflicts with reorganization goals

Lance, McIntyre and Eizenstat object to adding 30 additional positions to the White House staff, while the EOP reorganization effort is trying to reduce the EOP staff. Stu mentions the possibility of other detailees and likely expansion over time. Lance and Eizenstat believe that any decisions on the FRC reform should wait until the EOP reorganization team thoroughly reviews the proposed plan. Proposals regarding additional EOP staff should be considered in the context of the overall EOP reorganization.

*Correct*  
Jack states that he does not suggest placing the FRC chairpersons or their staff on the White House payroll. Rather, he favors placing the 10 chairpersons on the EOP payroll, and drawing 20 additional positions from participating departments. Although Jack sees advantages to placing all 30 positions in the EOP, he assumes that the President's desire to cut down the total size of the EOP outweighs those advantages.

D. involving the President too directly in tough local issues

Eizenstat observes that the proposed presidential appointees in each federal region would be very powerful figures, having jurisdiction over all agencies at that level. The appointees would be in highly exposed, political jobs, viewed as direct presidential surrogates, but the White House would have little effective control over them.

Stu believes the proposal involves the White House too directly. The President or his staff may be blamed for every mistake made by the federal government at the local level.

Lance and McIntyre are concerned that the proposals would raise expectations about the President's ability to solve many tough local problems with federal programs - many of which are tough and not easily solved - and that embarrassing disappointment and disillusionment might quickly result.

Jack responds that it will be necessary to raise some hopes and take some risks if an effort is going to be made to make the system work better. He is "convinced that there is no solution to this problem that is free of imperfections and shortcomings."

E. inadequate consideration of other options

Lance and McIntyre state their opinion that other options have been inadequately considered. They mention several:

1. having the FRC chairpersons selected from among the best regional directors, reporting to the USG group. They concede that this is not much of a change from the present system. Jack observes, "this is exactly what we have now, and it doesn't work for all the reasons we have previously discussed."

2. have the White House and OMB work to assure that better intergovernmental and interagency coordination takes place. Jack states his enthusiastic agreement, but says this approach is clearly not an adequate response to the problems.

3. abolishing the FRCs altogether. Lance and McIntyre state that governors and the Cabinet are in agreement that the FRCs have not worked well in the past, chiefly because the chairman does not have the authority to force interagency or intergovernmental coordination. They acknowledge, however, that abolishing the FRCs without simultaneously trying to design a better system is unacceptable, and Jack says that "without exception, everyone we talked to rejected this as a viable option."

4. Lance and McIntyre recommend that the FRCs be abolished as currently constituted by September 30, and that the President's reorganization project be assigned the task of reviewing the problem as a priority assignment.

Jack replies that he and his staff have spent the past 4 months considering the issue. In addition to consulting with the Departments, governors, the FRCs, state/local officials, and citizens groups, Jack's review has already had the benefit of a 6-month study conducted by OMB last Fall.

Jack argues that to manage and coordinate the federal regional system better, it is necessary to put some coordinators in the field and give them a workable linkage back to Washington. He states, "whatever else we need, we do not need another study. We need to decide what we want to do, and how, so that we can put the pervasive uncertainty and inertia on this subject in the field to rest."

Jack recommends that he, Eizenstat, Jordan, Lance, Moore, and McIntyre meet with the President to discuss the matter and decide on a workable course of action.

V. Presidential Decision:

\_\_\_\_\_ Make no decision now pending review of the proposed plan and recommendations by the EOP reorganization study group. (Eizenstat)

\_\_\_\_\_ Abolish the FRCs as currently constituted by September 30; the reorganization project group should take on the problem of federal regional coordination as a priority assignment. (Lance, McIntyre)

✓ \_\_\_\_\_ Meeting between the President, Watson, Jordan, Lance, Eizenstat, Moore, and McIntyre to discuss the matter and decide on a workable course of action. (Watson)

~~Other~~ \_\_\_\_\_ *This involves W. House so directly that EOP/FRC decision must be the same one.*

*J.C.*

Attachments:

Tab A - Watson, "Principal Recommendations Made on May 20"

Tab B - Watson, "Follow up on Federal Regional Council Reform"

Eizenstat, "Proposed Reorganization of the Federal Regional Councils"

Lance & McIntyre, "Watson Memo re Follow up on Federal Regional Council Reforms"

Watson (rebuttal), "Federal Regional Council Reform"



## PRINCIPLE RECOMMENDATIONS MADE ON MAY 20

Eliminate 26 Federal Executive Boards

Establish 10 Regional Coordinating Councils (RCC's), with one in each regional headquarters city

Eliminate 10 Federal Regional Councils

Explore making the Title V and RCC boundaries coterminous

Explore the possible elimination of Title II Commissions

Approve designation of Mid-Atlantic and Mid-America Title V Applications

### CHARACTERISTICS OF PROPOSED REGIONAL COORDINATING COUNCILS

#### Mission

- Interagency coordination in the field
- Intergovernmental liaison

#### Chairmanship

- Presidential appointee serving full-time
  - Acts as Administration ombudsman in field;
  - Reports to the Under-Secretaries Group;
  - Chairs the RCC;
  - Coordinates ad hoc working groups as needed;
  - Serves as a neutral convener and problem identifier, parallel to the role of the Secretary to the Cabinet in Washington.

#### Membership

- Reduce the core group of federal agencies from the present 11 FRC members to 5 or 6 drawn from HUD, HEW, DOC, DOT, DOE, DOL, EPA
- Ad hoc working groups as deemed necessary by the chairperson

#### Staffing

- Full-time executive assistant and secretary detailed from the Departments



THE WHITE HOUSE

WASHINGTON

June 17, 1977

MEMORANDUM FOR:

The President

FROM:

Jack Watson *Jack*

SUBJECT:

Follow up on Federal Regional Council Reform

In the course of our meeting on May 20th on the Federal Regional Presence, you asked for clarification on three issues before making a final decision on our proposals:

- o What is the reaction of the Governors to the proposal?
- o What is the reaction of the Cabinet?
- o How do we avoid making the White House a "Court of Appeal" for a wide array of state and local problems if we heighten their expectations by placing a "Presidential representative" in the field?

Reaction of the Governors

The proposals we made to you were drawn from suggestions and comments we received from Governors, Under Secretaries, Public Interest Groups, FRC Chairpersons and Executive Directors, and others. Over the past few weeks we have had direct contact with 47 Governors. They were virtually unanimous in expressing their dissatisfaction with the current FRCs but were equally consistent in the view that there must be a more effective coordinating capability in the field.

We received enthusiastic support for a full-time Presidential chairperson and for revised FRC membership from all of the Governors with whom we spoke.

Reaction of the Cabinet

Of the most likely five core ROC departments (HUD, HEW, Commerce, DOL, and EPA), all strongly support the reforms. HUD describes the proposal as "reinforcing the goals of this Department." HEW states that we "badly need effective problem solvers in the field" and that the proposal "holds real promise for achieving this purpose." EPA and DOL expressed "enthusiastic"

support. Commerce endorsed the recommendations while emphasizing the need to look at overall Title V Commission questions once the FRC question is settled. Reactions from other departments vary: DOT, Interior and CSA are generally doubtful that a change in FRC structure by itself will solve the problem in the absence of clear direction and support from the President and the members of the Cabinet (I agree); DOT and Interior also question elimination of the Federal Executive Boards; and GSA, Agriculture and VA support the proposed changes.

Several departments cited the parallel between the role of the Presidential representative in the field and the Cabinet Secretary/IGR Assistant in Washington. There is a strong preference among both the Departments and state and local officials for "housing" the Presidential representatives in the EOP, with a clear reporting relationship to the President.

#### White House as "Court of Appeal"

Some have expressed management and political concerns that, under the proposal, the White House might become overloaded with complaints and appeals from unhappy public officials and private citizens. In a "worst case" situation, the negative impact of the problem might outweigh the advantages of the proposal. These concerns are counterbalanced by the following factors:

- o Under the present arrangement, my staff and I already handle "ombudsman" problems, as does OMB. In my opinion, that function is not only an appropriate part of our role, it serves as a very useful early warning system.
- o We are actively working to strengthen the intergovernmental capability of the Departments and are referring as many problems as possible to them. This approach is significantly reducing the burden on us and reinforcing the appropriate departmental role in this area.
- o Smaller cities and counties do not often appeal to the White House now, and are not likely to do so any more under the proposed arrangement. On the other hand, Governors and big city mayors frequently contact White House staff members now, and will continue to do so on important issues no matter what organizational structure we adopt. At the same time, a full-time chairperson would serve as a useful contact point on lesser issues and would actually keep many matters away from Washington.

- o Although some problems not now coming to our attention would reach us under the proposed plan, I think that's a plus. It is the cross-cutting, interagency management problems occurring in the field which we need to know about in order to do our jobs well.
- o The Presidential representative would systematically refer problems involving a single agency to that agency. His/her mandate would extend only to inter-agency problems. Moreover, his/her clear instruction would be to resolve as many problems in the field as possible and to use the lead agency concept to the maximum extent.
- o Finally, when confronted with the drawbacks of both the current arrangement and the alternative reforms, I think the limited risks of the proposed approach are worth taking.

#### White House Staff Reactions

As a follow up to our meeting with you, I have had discussions with Stu, Frank, Mark Siegel, Harrison Wellford and Jim McIntyre. All agree with the need for major reform of the FRCs and believe it would be valuable to have a full-time Chairperson in each of the ten revised regional bodies.

There is also a unanimous view that any decision to implement the FRC proposal should be integrated with the EOP reorganization. We have worked with the reorganization staff, and the proposal you receive from them will include a suggestion on how to implement the FRC proposals in the context of their overall plans. Frank Moore particularly made the point that the submission of the reorganization plan to Congress provides the best vehicle for getting approval of the FRC reforms.

Stu and OMB expressed concern about the "Court of Appeal" problem addressed above. As a further protection against bringing too many case-work problems too close to the President, OMB and I jointly recommend that the Chairpersons report to the Under Secretaries Group, (USG), rather than directly to the Assistant to the President for Intergovernmental Relations. The USG is co-chaired by Jim McIntyre (or his designee) and by me.

Stu also expressed concern that the role of the Chairpersons might be seen by many Congresspersons as competing with their constituency-serving role. On the other hand, one of the most frequent complaints/criticisms voiced by members of Congress relates to lack of program coordination in the field; the proposal directly addresses that concern. Moreover, as we have defined the role of the Chairperson, he/she would not deal with any constituency issues but only with interagency-intergovernmental matters. I am convinced that if we are to manage the government more effectively, the intergovernmental problems now going to the Congress must also be brought to our attention.

THE WHITE HOUSE

WASHINGTON

June 17, 1977

MEMORANDUM FOR:

THE PRESIDENT

FROM:

STU EIZENSTAT *Stu*

SUBJECT:

Proposed Reorganization of the  
Federal Regional Councils

I agree with Jack that the Federal Regional presence may need reform. I think some of his proposed changes offer real possibilities for such reform. I do have several concerns, however, with the proposed changes.

1) I think any decisions should await the ongoing study of the Executive Office of the President. The effects on the Executive Office of the President must be carefully considered. I am concerned that the placement of the regional council payroll on the EOP will not only balloon the size of the EOP (initially 30 additional slots are contemplated, but that excludes the expected detailees and the likely expansion over time), but will also bring so many federal regional problems directly to the White House. Further study is needed, I believe, to determine whether these concerns are justified. I recommend, therefore, that the ongoing reorganization study of the Executive Office of the President be allowed to review the proposed plan and make its objective recommendations.

The importance of having the EOP study team review the proposal cannot be overemphasized. Not only does the team bring the experience and knowledge about the EOP accumulated over the past several months, but it deserves the opportunity to comment on a proposal which can affect significantly the organization of the Executive Office of the President. The study team's credibility will be impaired if changes in the EOP are made independent

of the team's opportunity to at least consider those changes and make recommendations consistent with the overall EOP reorganization. If there is a strong possibility, for instance, of having 30 additional EOP employees, the study team should have the opportunity to factor that possibility in its recommendations on the staff size of other EOP units.

2) One of the difficulties I see in placing an individual in the regions with direct White House ties will be the concern of members of Congress that, when there are problems with federal programs, constituents tend to contact their Congressman or Senator. Solving those problems has become a major activity for members of Congress. With the creation of a strong federal White House presence in the regions, it is possible that problems will filter to the White House and bypass the Congress. If that were to occur, I assume many members of Congress would be upset with the loss of one of their main links to constituents. I think Frank should carefully review the proposal with members of Congress prior to any final decision by you.

3) The Presidential appointees in each federal region will be very powerful figures having jurisdiction over all agencies at this level. Those appointees will be in highly exposed, political jobs. They will be viewed as direct Presidential surrogates---yet we will have little effective control over them.

4) The procedure by which the regional council reports back to Washington involves too directly the White House and thus the President. The President or his staff may be blamed for every mistake made by the Federal government at the local level.



EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

June 20, 1977

MEMORANDUM FOR THE PRESIDENT

FROM: BERT LANCE

JIM MCINTYRE

SUBJECT: Watson 6/17/77 Memorandum re Follow Up on Federal Regional Council Reforms

This is the OMB response to Jack Watson's subject memo to the President on Federal Regional Council reforms.

OMB is in agreement that the current Federal Regional Council system has not worked well and should either be abolished or strengthened but not be allowed to continue as in the past.

However, OMB disagrees with, and does not endorse the recommendation that the Chairmen of the new structure be Presidential appointees confirmed by the Senate, serving full time in each of the ten regions, and reporting to the President through the Assistant to the President for Intergovernmental Relations for the following reasons:

- It brings the President in too closely to hundreds of program management issues that will arise when state and local officials bring their detailed program complaints to the proposed Presidential Chairmen. The President should not be a "Court of Appeals" for Governors and Mayors on hundreds of specific problems with federal programs.
- We are in disagreement that 30 positions should be added to White House staff for this purpose as proposed while the EOP Reorganization effort is trying to reduce EOP staff. The proposal should be considered in the context of the overall EOP reorganization and its priority measured against other EOP proposals for change.
- We are in agreement with Stu Eizenstat's concern that Congress might see the full time White House Chairmen in

each region as competing with their constituency-serving role. This could cause a serious problem in attempting to deal with Congress on Reorganization proposals.

- Expectations will be raised in state and local officials that the assignment of a White House official reporting to the President will solve many of their problems with federal programs. But the underlying problems are tough and not easily solved and the proposed Chairmen will have no authority over agency programs to make the desired changes. Disappointment and disillusionment can come early and embarrass the President.

It is also our opinion that other options have not been adequately considered. One is to have the Chairmen not assigned to EOP at all but rather be selected among the best Regional Directors in the core agencies and report to a greatly re-invigorated Under Secretaries Group chaired by Jack Watson and Jim McIntyre. This would have the advantage of not raising the EOP staff issue nor Congressional concern. The disadvantage is that this is not much of a change from the current system.

Another option is to have both the White House and OMB, working with the Under Secretaries Group and agency intergovernmental liaison officers, assure that better intergovernmental and inter-agency coordination takes place. The White House Intergovernmental office would be involved in overall intergovernmental policy while OMB Intergovernmental Relations staff would work out the intergovernmental management problems on a day-to-day, ad hoc basis both in Washington and in the field.

Another option that should be seriously considered is to abolish FRC's altogether. The Governors and the Cabinet are in agreement they have not worked well in the past, chiefly because the Chairman does not have the authority to force interagency or intergovernmental coordination. The current proposal does not solve that problem.

However, abolishing the FRC's without simultaneously making the effort to design a better system to more effectively coordinate federal program delivery is unacceptable. Therefore, in considering all of the above arguments, I recommend that the FRC's be abolished as currently constituted by September 30th and the President's Reorganization Project be assigned the task of reviewing the problem of federal interagency and intergovernmental coordination in the delivery of federal resources to the public and to state and local officials throughout the country as a priority assignment.

THE WHITE HOUSE

WASHINGTON

June 23, 1977

MEMORANDUM FOR: THE PRESIDENT  
FROM: Jack Watson *Jack*  
SUBJECT: FEDERAL REGIONAL COUNCIL REFORM

After struggling with this issue for several months, I have concluded that it is like the proverbial tar baby: every time I give it another lick or a good swift kick, I get further caught up in the problems.

After all is said and done, there is really only one issue involved in a review of the federal regional presence:

- Do we want to try to manage the regional activities of the federal government more effectively, or not?

If we do not, we can leave the system (which everyone acknowledges to be a failure) as it is, or we can abolish even the semblance of a federal coordinating and implementing capability outside of Washington.

On the other hand, if we want to try to make the system work better, by managing and coordinating it better, we need to put some coordinators in the field and give them a workable linkage back to Washington.

I am attaching three short memoranda for your review:

- One from me reporting the results of our survey efforts since the meeting with you on May 20th in answer to the questions you posed;
- A memorandum from Bert Lance and Jim McIntyre commenting on my memorandum; and
- A memorandum from Stu.

I apologize for submitting three separate memoranda on the subject, but, since all three are brief, thought it best to let you have the full flavor of everyone's views, rather than to summarize them. I tried to respond to Stu's concerns in my attached memorandum and have only these comments to make to Bert's and Jim's memorandum of June 20th. I have said all of these things directly to Bert and Jim.

(1) As is clear in my attached memorandum, I do not suggest that the ten regional chairpersons report to me. On page 3 of that memorandum, I suggest that they report to the Under Secretaries Group which is co-chaired by OMB and myself. I also do not suggest that the positions created be confirmable posts.

(2) I also do not suggest the placement of the chairpersons or their staff on the White House payroll. I did not address that issue in my memorandum and, in fact, suggested on page 3 that implementation of your decision on this subject should be integrated with the overall EOP reorganization. My personal view is that only the ten chairpersons should be added to the Executive Office of the President (not the White House staff), and that the total of 20 positions necessary to staff all ten chairpersons be drawn from the participating departments. Although there are definite advantages to placing all 30 positions in the EOP, I have assumed that your desire to cut the total size of the EOP outweighs those advantages.

(3) Bert's and Jim's points about possible adverse Congressional reaction and raising expectations of state and local officials are briefly addressed in my attached memorandum. Of course the problems are tough and not easily solved, and of course neither this proposal, nor any other, will be a panacea. At the same time, if we are to try to do something to make the system work better, we will necessarily raise some hopes and take some risks. I am convinced that there is no solution to this problem that is free of imperfections and shortcomings.

(4) As to consideration of other options, we have spent the last four months considering all the options outlined on page 2 of Bert and Jim's memorandum and countless others. Our review of the whole subject had the benefit of a six-month study of the FRC's, which was conducted by OMB last Fall. In addition to the OMB study, we have consulted endlessly with the Cabinet Secretaries, Under Secretaries and other departmental people; all the Governors; all of the FRC's and their staffs; other state and local officials; and citizens' groups. Our recommendations emanate from all that consultation and our own analysis and synthesis of what we learned.

My comments on the four options mentioned by Bert and Jim are as follows:

- The first option suggested by Bert and Jim is to have one of the departmental regional directors also serve as chairperson of the Regional Coordinating Commission. This is exactly what is done now, and it doesn't work for all the reasons we have previously discussed.

- Their second option is basically a proposal for better intergovernmental and interagency coordination in Washington. I enthusiastically endorse that goal, but it is clearly not an adequate response to our coordination and communication problems in the field.
- Their third option is to abolish the FRC's altogether and substitute nothing. Without exception, everyone we talked to rejected this as a viable option and stressed the pressing need for improved coordination and implementation mechanisms outside of Washington.
- Their final option, and the one apparently favored by Bert and Jim, is to study the matter further while committing ourselves to abolishing the FRC's by September 30th. Whatever else we need, we do not need another study. We need to decide what we want to do and how, so that we can put the pervasive uncertainty and inertia on this subject in the field to rest.

I recommend that you sit down with Bert, Jim, Stu, Ham, Frank, and me to discuss the matter and decide upon a workable course of action.